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ABSTRACT

These two congressional hearings are part of a series held by the Subcommittee in conjunction with its oversight of the Federal Government's enforcement of equal employment opportunity laws and affirmative action. The first hearing addresses what are perceived to be destructive rather than constructive policy initiatives and program changes in the area of federal contract compliance programs. The second hearing examines the scope and continuing validity of the concept of affirmative action in search of bases for insisting upon the continuation of valid and successful programs. Testimony includes statements and prepared statements, letters, and supplemental material from individuals representing universities; Compliance Division, Illinois Department of Human Rights; Chicago Urban League; California Employment Development Department; Midwest Women's Center; Chinese for Affirmative Action; Levi Strauss and Co.; Los Angeles Basin Equal Opportunity League; United Food and Commercial Workers International Union; California Commission on the Status of Women; National Association of Minority Contractors; Mexican American Legal Defense and Educational Fund; United Steelworkers of America; Women Voters of Chicago; International Women's Economic Development Corp.; and United Automobile, Aerospace, and Agricultural Implement Workers of America. (YLB)

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ED244138

OVERSIGHT HEARINGS ON EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Part 2

HEARINGS

BEFORE THE

SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

OF THE

COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

FIRST SESSION

HEARINGS HELD IN CHICAGO, ILL., AUGUST 11, AND LOS ANGELES, CALIF., AUGUST 14, 1981

Printed for the use of the Committee on Education and Labor

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OVERSIGHT HEARINGS ON EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Part 2

TUESDAY, AUGUST 11, 1981

House of Representatives,
Subcommittee on Employment Opportunities,
Committee on Education and Labor,
Chicago, Ill.

The subcommittee met, pursuant to notice, in the Assembly Hall, Center for Continuing Education, University of Chicago, 1307 East 60th Street, Chicago, Ill., commencing at 9:05 a.m., Hon. Augustus F. Hawkins (chairman of the subcommittee) presiding.

Members present: Representatives Hawkins and Washington.

Also present: Representative Collins of Illinois.

Staff present: Susan Grayson, staff director; Edmund Cooke, legislative associate; Carole Schanzer, legislative assistant; and Edith Baum, minority counsel for labor.

Mr. Hawkins. The Subcommittee on Employment Opportunities of the Committee on Education and Labor is delighted to be in Chicago for the second hearing in a series of hearings held by the committee, in conjunction with its oversight of the Federal Government's enforcement of equal employment opportunity laws and affirmative action.

The first hearing was held on July 15, 1981, in Washington, D.C., and focused on the emerging equal opportunity policies of the Reagan administration as disclosed both by statements of principal Cabinet officials and by the actions of those officials regarding matters relating to the Federal enforcement of equal employment opportunity laws.

Parenthetically, the Chair would like to say that these officials were invited to the first hearing, including Attorney General Smith, as well as Secretary of Labor Raymond Donovan. They declined the invitation extended by the subcommittee to participate in a national dialog with both business and labor, as well as community groups, on proposed changes in the regulations. We have prior to that time and subsequently attempted to get that national dialog.

So, today in Chicago we address what we perceive to be destructive rather than constructive policy initiatives and program changes in the area of Federal contract compliance programs. Considerable effort has been expended by the officials of prior administrations to mold the Federal contract compliance effort into an effective and consistently enforced program. However, the present administration's willingness and apparent intent to discard these gains, without thoughtful and prudent consideration of the viability of alternative schemes, is both dangerous and unacceptable.

Thus, while we acknowledge the importance of and possible need for regulatory and administrative revisions to eliminate inefficient, needlessly burdensome or wasteful practices, we cannot tolerate such change at the expense of program effectiveness.

As in our earlier hearings, we seek the advice and insight of those who will present testimony today in aid of our oversight responsibility. We look forward to hearing from each witness this morning.

The Chair would like to announce that the committee is largely here in Chicago today because of the persistent request, may I say, of your own Congressman from this area, the Honorable Harold Washington, who is a distinguished and most effective member of the subcommittee who joined the subcommittee this session, and who has consistently made a contribution to the ongoing responsibilities of oversight as well as the creation of legislation to meet the critical needs of these days. It is certainly a great pleasure for me to introduce him and to yield to him for such statement as he may desire at this time.

Mr. WASHINGTON. Thank you very much, Chairman Hawkins, for your very kind remarks. I concur in your entire statement, and particularly those rather laudatory terms that you described them in, and I appreciate it.

It has been a learning experience for me to have served with you over these years, and I will say, at the risk of embarrassing you—and I know you well enough to know that it does embarrass you—I will say that Congressman Hawkins, without question, is a man whose name is associated very intimately and closely with the whole question of employment and employment opportunities throughout this country. He, in a true sense of the word, is one of the half-dozen or so Members of Congress who, through their leadership, have carved out over the past 20 years most of the major social programs which we in this country have learned to enjoy and which have been under such serious and unfortunately successful attack by the present administration.

Congressman Hawkins' contribution during those years is without question—he is the father of the CETA program. And he joined in with the late Hubert Humphrey in the Humphrey-Hawkins Act which is now legend and which, if this President had followed, there would be no necessity for I think these hearings that we are having here today.

But just as the Federal Government seems to be turning its back on the plight of this country's racial minorities, there is within the minority community the growing consensus that the time for excuses is over and America must deliver on its promises of racial justice and civil rights, if the Government is to be believed at all. This is more than just an image problem, as some within the administration have suggested. We are on the verge of a very, very real crisis of confidence, one that America simply at this time cannot afford.

I do not believe that a house divided against itself can stand; I do not believe that a nation divided against itself can be perceived by other nations, friend or foe, as capable of delivering on its promises and commitments. The way in which the Federal Government handles its civil rights responsibilities during this decade will, in a very real sense, determine the nature of race relations in this country for a long time, if not for all time.

And yet I feel that we may be missing our last opportunity to make real progress and see these problems solved. The administration has consistently criticized the only civil rights mechanisms which have been shown to work, while failing to offer anything in their place. It has moved to dismantle functioning programs, programs that the courts have sanctioned, and that employees were finally gaining some understanding of and experience with. It has taken steps which undermine these programs, while suggesting nothing to replace them, other than some vague theories of trickle down economics which altogether ignore the fact that discrimination remains a real factor in the economic life of this country. Discrimination can ony be dealt with by strong, antidiscrimination enforcement programs.

It is no accident that Chicago has been chosen as one of the cities in which to convene these hearings. Mr. Hawkins is an understanding man, and Mr. Hawkins is a compassionate man. He is a worldly man. He knows the various pockets of discrimination and rampant unemployment throughout this country. So it was with no great urging that I requested that he come here.

Chicago has long been recognized by sociologists in Government studies as perhaps the most racially segregated city in the Nation. As a Chicagoan, born and bred, it gives me no pleasure to say that, but I must reemphasize it.

The same attitudes tend to characterize its employment practices. One recent visitor observed, after watching the crowds from a Michigan Avenue office building leave for lunch, "Just looking at the people who have the jobs, you would never know you weren't in the State of Minnesota." What this visitor was reacting to was the informal apartheid that, despite some real progress, still dominates the economic, social and political life of this city.

I appreciate the fact that the witnesses who will appear today represent many facets and facts of life. Some are from civil rights organizations; some are from labor; some from women's organizations; and others from the business community. Many have long histories of involvement in these issues. I hope that this hearing can serve to shed some light on Federal enforcement responsibilities.

Mr. Chairman, I simply want to close in greeting you, the gentleman who has carved out in this country a reputation for doing something about the serious question of unemployment, and I am more than happy to have served under you and with you on this committee, and I assure you that Chicago has something to say to you today.

Mr. Hawkins. Thank you, Mr. Washington.

The Chair is delighted also to have present with us the most distinguished colleague who until recently served as chairman of the Congressional Black Caucus. It was in that role that I was delighted to be a staunch supporter of her's and to enjoy the very outstanding leadership. I am delighted to have Assemblywoman Cardiss Collins of the Seventh Congressional District with us. Mrs. Collins, we will yield to you for any statement you care to make at this point.

Mrs. COLLINS. Thank you very much, Mr. Chairman.

I very much appreciate your providing me with this opportunity to attend this hearing, which is essential. We find ourselves at a time in American life when many of our social programs and our people programs have been destroyed. I can add, too, the fact that I thought after 1964 we were on the second reconstruction, but I believe at this time that has been very effectively undermined by actions that are taking place every day in Washington, D.C.

I am delighted that you have come to our city of Chicago. Although we're not sitting in my congressional district, the problems are the same throughout the United States. I am pleased that you are holding these hearings because Federal enforcement of equal opportunity and laws is action that we very gravely need.

Now, we know that you have been, as the gentleman from the First Congressional District has said, the father of much of this legislation. You certainly have been the one who has kept a watchful eye to see to it that we are, indeed, represented fully when it comes down to equal employment opportunities.

I am concerned as you are about the regressive character of recent administration initiatives that relate to equal employment opportunity laws. It appears to me that as soon as we take a step forward something happens that makes us go backward. I am concerned that the administration will try to so weaken the laws that we have now as to render them absolutely impotent at this time. Action must be taken to see to it that the administration does not continue to lend a deaf ear or lip-service as a remedy for employment discrimination.

A few months ago, Attorney General William French Smith was quoted in newspapers as announcing that the Justice Department would stop enforcing mandatory busing and disapprove the use of racial quotas in employment discrimination cases. He described these remedies for discrimination as ineffective and unfair and said that both need to be replaced by a more practical and effective approach. He went on to discuss the Constitution saying that, "the Government should treat all citizens fairly and equitably."

My initial reaction to the Attorney General's remarks was that he is incredibly naive. Naive to think that now the Government will treat everyone equally when the people will not treat everyone equally. If we did treat all people equally then there would be no need for affirmative action programs. Employees would hire those best qualified—be they black, yellow, brown, red, or white. There would certainly be no need to systematically, institutionally discriminate against whole classes of a race—forever condemning them to invisibility, low skilled jobs, or no jobs.

Mr. Smith quite convieniently chooses to forget that which I cannot. The kidnaping of a proud intelligent people from the shores of Africa. The systematic stripping of their language, wealth, dignity, self-esteem, manhood, womanhood, and family life. From there we saw laws on the books which forbade Negroes the right to be taught how to read and write. The startling insecurity of a majority over a minority did not stop there. It went on to manifest itself into Jim Crow laws. Laws which saw to it that black folk sat only in the back of buses, ate only at certain drug store counters, prayed at certain churches, went to separate schools, and used separate restrooms. We were witness to an era which lynched, burned, and mutilated young black men for a variety of sick and insane reasons. We began to gain some insight into the lynch mob mentality and the sordid, cowardly make up of the dreaded KKK. It was an era of separate and unequal as opposed to what was being touted as separate but equal.

In the early fifties we saw separate but equal discrimination challenged and desegregation was ordered. While we witnessed passage of the Civil Rights Act, we also saw evidence that racially discriminatory registration and voting procedures were being applied thru the use of poll taxes, literacy tests, and gerrymandering. Evidence of systematic racism inhibiting black participation in the electoral process. We had to challenge this process and came up with the Voting Rights Act—which gave the Government the power to prevent discrimination against black and minority language voters.

History has demonstrated to us that laws on the books to protect black and minority interests were necessary then and are still necessary today. To suddenly lay responsibility of equality on people just does not work. I wish it would—I hope one day that we can get beyond skin color hangups. But wishing and hoping do not take action—they are words that by definition are woefully ineffective and inadequate.

Where would we be today without the U.S. Equal Employment Opportunity Commission [EEOC] which was created by title VII of the Civil Rights Act of 1964 to receive, investigate, and resolve charges of discrimination in employment on account of race, color, religion, sex, or national origin. Title VII covered employers, labor unions, and employment agencies. From 1965 until 1972, EEOC had authority to seek resolution of complaints by conciliation alone. Conciliation alone proved ineffective for two reasons: First, because much of the discrimination charged involved not isolated discriminatory acts but institutionalized or systemic practices that could cause discrimination against large numbers of people in classes protected by title VII; and second, because EEO could not compel any employer to agree to a resolution satisfactory to the Commission.

The Equal Employment Opportunity Act of 1972 amended title VII by giving EEOC authority, in addition to that of attempting conciliation, to bring suit in court to enforce equal employment opportunity [EEO] rights of persons charging discrimination and to attempt conciliation and to bring suit in court to attack any pattern or practice of discrimination—the 1972 act transferred this pattern-or-practice authority from the Justice Department to EEOC. The 1972 act also extended EEOC jurisdiction to cover more employers and labor unions, nonreligious educational institutions, and State and local governments, and governmental agencies, although any court suits against State and local public employers are to be brought by the Justice Department rather than by EEOC.

In President Reagan's EEOC transition team report on affirmative action, there was "why not drop all color, sex, and religious bars in honest quest for the best qualified post—no matter what the distribution turns out to be?" which echoed the Attorney General's remarks. My rebuttal:

One, a merely negative ban on employment and educational discrimination commencing at the present time is not sufficient to do justice to minorities. Minorities have not only been excluded from jobs or from better jobs; they have been denied the preparation and motivation required for better jobs. In many instances they have received inadequate schooling and have been deprived of opportunities for training to acquire skills. More seriously, minorities and women have been deprived of awareness of their own possibilities in terms of ability and achievement, and have been conditioned to expect that higher-level work is inaccessible to them. Hence, affirmative action must continue to be compensatory.

It is not enough that minority persons and women be included in the competition for available jobs, because past discrimination and deprivation have placed them at a competitive disadvantage. Nor is it enough that they be given a chance to acquire skills in upward mobility training programs, although this is essential. Minority persons and women must be positively encouraged by affirmative Outreach to apply for the kinds of jobs from which they have heretofore been excluded. Minority persons and women must be recruited and placed and trained with a view to upward mobility in such a way that their vocational expectations will be raised to a level commensurate with their potentialities and abilities.

Two, despite Mr. Smith's statements affirming the abstract principle of equal opportunity, many employers retain discriminatory attitudes. Affirmative action may be unable to change such attitudes, but it is necessary at least to nullify their efforts.

Three, special efforts to hire, train, and upgrade will be only a temporary effort to render minority persons and women competitive with others. When parity has been achieved in education and training, and when reasonable representation of minority persons and women has been attained in managerial, professional, technical, and skilled craft positions, then affirmative action will be no longer necessary and will cease.

The reality that we face of this Nation's double standard toward equality and justice for all makes us see that this Nation's issues must be addressed through a clear definite policy of where we are and where we expect to go. How do we restore our faith in the system when systematic racism does in fact exist and is alive and well? Racism and economic exploitation is a creature by which people, yes people, have been ignored. Blacks are not nonentities, but people who deserve the same rights and consideration as others in this country.

The Congressional Black Caucus, of which I am a member, has sent a telegram to the Attorney General requesting a meeting to obtain clarification on his views which weaken civil rights enforcement. I, along with my colleagues, anxiously await a response.

Dr. King stated so eloquently, "With every ounce of our energy we must continue to rid our Nation of the incubus of racial injustice."

Discrimination has been the inseparable mate of racism. Humanity is waiting for something other than a blind imitation of the past. Should we truly want to advance we need to retain full strength laws which counter discrimination until it no longer exists. This will make us a new people and Nation infused with love, justice and equality and will change our dark days into bright tomorrows, lift us from the fatigue of despair to heights of new hope for a future of decency. The world awaits the emergence of this in America.

Thank you.

Mr. HAWKINS. Again, we appreciate your presence, Mrs. Collins.

The subcommittee's first witness today will be Ms. Carin Clauss, Professor of Law, University of Wisconsin. Ms. Clauss was formerly Solicitor of Labor in the U.S. Department of Labor.

Ms. Clauss, we are delighted to have you as our first witness. I hope you notice that the Chair did not fully explain some of the proposed changes that have been bandied about in terms of regulations and it is the hope of the Chair that through you and others who will be before the subcommittee today as witnesses, that some of these changes will be more fully discussed. Certainly you, as a former Solicitor of Labor, are in a rather unique position to assist the Committee and we are delighted to have you.

STATEMENT OF CARIN CLAUSS, PROFESSOR OF LAW, UNIVERSITY OF WISCONSIN, AND FORMER SOLICITOR OF LABOR, U.S. DEPARTMENT OF LABOR

Ms. CLAUSS. Thank you, Mr. Chairman, and thank you first for the opportunity to be here today.

Prior to becoming Solicitor, I was at the Department for 14 years and was very active in the executive order program, not only during the Carter administration but also in the Johnson administration and in the Ford administration. It is a program in which I have a deep and abiding interest.

I feel I should add to the eloquence of the remarks of you and your colleagues on the subcommittee, but I shall opt to be more technical and apologize for some of the dryness of the comments. But they are comments which I think need to be made to address some of the challenges to the Executive order program.

I had intended to bring with me a written statement, but a trial in the Caribbean prevented me from returning to Madison until yesterday, so I would ask if I could make an oral statement today and submit my written statement to your subcommittee later this week.

Mr. HAWKINS. Without objection, so ordered.

The Chair announces that the record will be kept open for 2 weeks for any such statements which you, the other witnesses, or the public may wish to submit.

Ms. CLAUSS. Thank you, Mr. Chairman.

Before turning to the proposed regulatory changes, I would like to address the issue of the Executive order's legality. I have been sent a paper prepared by David Copus and Daniel Karnes of two Washington law firms challenging the legality of the Executive order, and that paper by itself wouldn't give me much concern. But there have been a number of articles in the last few months published by some of my colleauges at other universities taking a similar position, that the Executive order is invalid.

Needless to say, I strenuously disagree with the thesis of those articles, and I have responded to them in some detail in my written statement.

Let me just say here that although the Supreme Court has not ruled on the legality of the Executive order, it has been with us in some form or other since 1941, and the Third, Fifth, Seventh, and D.C. Courts of Appeal have repeatedly upheld the legality of the order in a number of decisions dating back to 1971.

The Supreme Court has had numerous occasions to review those decisions and has declined to do so on each occasion. The Supreme Court's most recent opportunity was in the *Chrysler Corp.* v. *Brown* case in 1979, where the Court vacated one of the disclosure regs promulgated under the Executive order. Had there been any question concerning the validity of the underlying Executive order, that decision would have been unnecessary and I think implies at least the court's willingness to accept the validity of the Executive order.

What all of these Courts of Appeals have held is that the Executive order is a valid exercise of the President's power to prescribe policies under the Federal Procurement Act of 1949.

There is only one court that has expressed some doubt about this proposition, the fourth circuit in its recent *Liberty Mutual* case, although it did not go so far as to say those cases were wrong. Although I think that case is poorly reasoned and it does not go to the basic issue before us, I won't in my oral comments devote any time to it. I might just note the very distinguished Judge Butzner wrote a lengthy and convincing dissent.

What the opponents of the Executive order contend is that the Procurement Act cannot provide a basis for the Executive order, because in 1949 Congress made no reference to discrimination as a bottleneck to effecient and cost-saving procurement. They also point out there is an insufficient nexus, they argued, between procurement and equal employment opportunity. The courts have rejected both those arguments.

Let me just say I don't believe any of the Executive order is based on the Procurement Act, or contemplated at the time Congress passed the Procurement Act, or they undoubtedly would have dealt with the issue at that time.

You may recall 2 years ago the litigation that grew out of President Carter's wage price control Executive order, and obviously that was not one that had been contemplated in 1949 but was clearly upheld by the courts.

What the courts have held in these cases is that there is a clear nexus between cost of procurement and including in our Nation's labor pool all qualified workers, blacks, women, Hispanics, and other minorities, and that any policy which precludes those people is going to have costs not only in terms of human suffering and in terms of basic injustice, but in terms of our ability to meet the demands of our economy.

The next argument advanced by the opponents of the Executive order is that it must, of necessity, be limited to Government contracts, that it can only apply to the contract itself and not to the contractor's entire workforce. This is an issue that concerns me greatly because one of the things we had done in the Carter administration was to change the construction regulations in 1978 to apply them not only to those employees working on the particularly federally assisted construction contract, but to all of the projects of that particular contractor. The reason, quite obviously, was to avoid what we call bicycling, where a contractor has a small number of minorities and women that it rotates among its federally assisted contracts without making any basic change in its workforce in terms of minorities and women.

To the extent there would be any suggestion that this is legally required, I would want to rebut it now. Again, going back to the wage price control executive order, it obviously applied to the entire workforce and not just to that part that was assigned to the Government contract.

The final argument made by these commentators is that the Executive order, assuming it's valid, which they contest, must be limited to the same scope as title VII of the Civil Rights Act and that it cannot provide any retrospective relief. It can't provide back pay. It can't alter seniority. It has to be subject to the statute of limitations embodied in title VII. These arguments are not only without any basis in the law, but they are directly contradicted by the legislative history of the 1964 Civil Rights Act and the amendments in 1972. I know that here I am preaching to the choir, but just for those in the audience who are not familiar with that legislation, when this committee and others passed the Civil Rights Act in 1964 there were numerous references to the Executive order. The authoritative *Clark* case memorandum spelled out in detail the kinds of retrospective relief which are provided under the Executive order.

Senator Humphrey commented that title VII was not nearly as broad as the Executive order already in place, and a conscious decision was made to leave the Executive order untampered, unharmed, and indeed, that original Civil Rights Act makes exclusive reference to the Executive order.

Then in 1972 Congress fought back repeated efforts to either destroy the Executive order altogether, or to severely limit it by extending 703(j) of title VII to the Executive order. All of those efforts were defeated, explicitly in order to maintain as part of the Executive order goals and timetables in a Philadelphia plant.

That, Mr. Chairman, brings me to a second small diversion I would like to make, and that is just to comment very briefly on the importance of goals and timetables.

Goals and timetables are the very guts of the Executive order. I am increasingly distressed at the volume and vehemence of the attack on goals and timetables. It is a misnomer to refer to them as preferential treatment, as these articles do. They are intended to serve as numerical targets.

Assuming there is no evidence of discrimination, or of the kind of differential utilizations which would constitute a prima facie case of discrimination, the goals and time-tables, in those cases where there is no discrimination or evidence of discrimintion, do not provide for any preferential treatment or catchup or affirmative action overrides. Those are concepts that we use when we are remedying prior discrimination. In the typical goals and timetables, they are established on the basis of the availability of minorities and women in the workplace. They simply state roughly what you would expect as an employer to hire in terms of minorities and women if there were no discrimination, if there were no societal discrimination, or if there were no perceived discrimination. So you are just being where you would be absent any discrimination.

Anyone, Mr. Chairman, who has worked in this area will tell you that a policy of mere nondiscrimination is wholly inadequate to overcome the effects of past discrimination, and to achieve any meaningful goals and gains in the employment area for discriminated against groups. We tried the passive policy of nondiscrimination for 25 years and it didn't work. It was for that reason that President Kennedy and then President Johnson adopted the concept of affirmative action.

I think it very interesting that goals and timetables grew out of a suggestion by a contractor. It was not a Government idea. Back in 1967, when the Department had instituted its so-called Cleveland area program, it required the low bidder on a Government construction contract to come in with an affirmative action plan, and the low bidder in this particular case came in and he had what he called his manning tables. Those tables showed the number of employees he intended to use in each trade and craft, and how many of that number would be in those days minorities, since women were not at that time included by the Executive order.

Now, the Government was so impressed with this device that it immediately instituted it in the Cleveland area and held up some large amount of money—I think it was something like $80 million, and I will provide the correct figure for the record—for 2 months, during which time the contractors in Cleveland managed to increase the number of minorities in five trades, from 12 to 500, a very effective program in a very short period of time.

I will be providing a lot of statistics for the record, demonstrating the efficacy of goals and timetables. I just have two examples to give you today.

In the coal industry, in 1978, one-half of 1 percent of all underground coal miners were women. As a result of a conciliation agreement worked out with the coal companies, by the end of 1980, 3½ percent of all underground coal miners are women. This is an occupation which, although arduous, pays extremely well. It is in a part of the country where women have typically been paid at the minimum wage, or less, and it is a growth area as we move more and more of our production into coal.

I might say that those companies have a recruitment goal of 20 percent, and they have more applicants than they need to meet that recruitment goal.

Women in construction is another example. This is something that women tried to get into during several administrations. Although there were lots of Department of Labor sponsored projects to train women in construction, to provide apprenticeship for them, and to help them find jobs, those programs were not successful. When we finally instituted goals for women in construction in 1978, their participation in construction increased by over 30 percent in 18 months.

I am very concerned when I look at the July 14 notice in the Federal Register which asked what should we do about goals in construction for women. I believe there may be some pressure to either leave the goals at their current low level or to eliminate them altogether.

There have been other significant gains in the electronics industry, in banking, and in heavy industry. GM, for example, has an excellent program and I will provide some of their statistics for the record.

Turning then to the regulations, I should say at the outset that we are all somewhat handicapped, at least we in the public, by not having a copy of the regulations that are presently pending before the Department of Labor. I resisted the temptation to persuade one of my former staff members to provide me a copy and I thought that would not be the proper way to proceed. I have, however, obtained from the various public interest groups what they think are the proposed regulatory changes. I will use that as my map for discussion.

I think we will see, under any of the proposals floating in Washington, a substantial reduction in coverage for purposes of requiring the preparation of an affirmative action program, and also for purposes of being subject to the Executive order at all.

I think this is a grave mistake. I do not believe there should be a distinction between contractors in terms of size when it comes to complying with the concept of nondiscrimination and affirmative action. That doesn't mean that we shouldn't do something to ease the regulatory burden on small contractors, and I would be the first to admit that I think the regulations which we prepared in the Carter administration did not go far enough to do that. If I had one criticism of the December 30 regs, it would be that we were not creative enough in coming up with some short cuts for the small employer. But far from eliminating employers from coverage, we should be adding employers to coverage. That is what the Carter regulations did, the regulations that have been withdrawn and will be replaced.

For example, we had provided that you would aggregate the dollar amounts of contracts so that under the old Executive order you were subject to the nondiscrimination provisions of the Executive order if you had contracts in the amount of $10,000. Historically, that had been construed to be one contract. We said no, you're going to aggregate your contracts, and if you had more than $10,000 in a year, then you are at least subject to an obligation not to discriminate.

With respect to affirmative action, the old rule was if you had 50 employees and a contract in the amount of $50,000, you had to have an affirmative action plan. We said that again you would accumulate contracts, and if they came up to $50,000, you would have to have an affirmative action plan.

The proposal I have heard the new administration intends to promulgate is that there will be no aggregation either for nondiscrimination or for affirmative action, and that the new trigger for having to have an affirmative action plan will be contractors with 500 employees instead of 50 as it currently stands, and a contract of $1 million, instead of aggregated contracts up to $50,000.

Now, we are told that this is not a serious change, because although it sounds serious, we are told by the new administration that this, although it exempts 75 percent of all government contractors, it covers 75 percent of the employees.

I would have three responses to that. First, I think it is going to have a tremendous disparate treatment in terms of geography and type of industry. For example, I am told that it will exempt 80 percent of all universities since very few university contracts are $1 million or more. Most large universities will accumulate contracts in that amount, but they won't have one contract in that amount. And yet that is an area where we have seen substantial discrimination against professional people and one that we worked very hard to correct and eradicate in the last administration with the people at Education and HEW prior to that.

I also recall that I believe last week or 2 weeks ago President Reagan commented that 80 percent of all new jobs in this country are being created by businesses which employ 100 employees or less. Now, the place where affirmative action is the most effective is where you have job creation. When you are dealing with an industry that is declining, an industry that has massive layoffs as we have in the auto industry or the steel industry, that is not where minorities and women are going to make substantial and lasting gains. If we are going to give them a fair share of this country's riches, it has to be in jobs and in opportunties that have some future. So if President Reagan is right, if that is where 80 percent of the new jobs are, then to restrict affirmative action plans to employers with 500 or more employees is going in precisely the wrong direction.

The affirmative action plan is the one piece of our civil rights laws that does not require tens of thousands of Government inspectors. I firmly believe that most employers in this country want to do the right thing, and that they want to provide equal employment opportunity to all people. But they don't think about this problem, and what forces the employer to think about it more than to be told he has to sit down and prepare a very simple chart, looking at his jobs, and seeing how many minorities and women he has in his work force. And when this small employer of 50 people in New York City looks at that and says "My goodness, I have only one woman secretary and no blacks," doesn't he say to himself "I must be doing something wrong." That is the way to combat discrimination, not to rely on a Government inspector coming in and finding this situation and then seeing if he has some law he can possibly utilize to take punitive action against that employer.

That gets back to the contractor who first suggested to us the idea of goals and timetables. He felt he had an obligation and he used normal management techniques to address that problem.

I think, instead of withdrawing employers from the obligation of the Executive order, the new administration would serve us all much better if it would look for new and creative ways to lighten the burden on small employers. Certainly, we could have simpler forms. It seems to me, when we are dealing with small employers, that we could permit job groupings. If you have an employer with only 50 people, maybe he doesn't have to look at each separate job group. Maybe he can look at nontraditional jobs. Maybe he can look at jobs paying more than $30,000, some simple way to see whether there is inadvertently underutilization or discrimination against protected groups.

The Department of Labor could certainly consider publishing some sort of benchmark data that could be used by small employers, that if you are located in the Northeast this is what your employment picture should look like, more or less, and circulate that to small employers in order to save them the burden of preparing it themselves.

Along with this change is the continuing suggestion that employers would not have to set goals and timetables unless they had below 80-percent utilization of minorities and women. This was the Firestone case in Texas. That proposal sounds innocent. If you're going to keep goals and timetables and all you're going to do is not require an employer to come up with some magical chemical balance, that he is always in perfect synch. Isn't it ridiculous for us to expect employers always to be able to have precisely the right number of American Indians, Hispanics and so on.

The difficulty with the 80-percent figure, however, is that it destroys the whole notion of affirmative action and reduces the Executive order program to a title VII nondiscrimination program. Because 80 percent is what the Supreme Court has said is prima facie evidence of discrimination. If you are that underutilized, you are undoubtedly discriminating. We want this program to apply to people other than blatant discriminators. We are trying to have a program that doesn't paint people as bigots, but a program which encourages them to do all they can to help the people who have been excluded from the work force and to get into it in a meaningful way. Those are two totally different concepts. One reason why this Congress and this committee, in particular, has strived so hard to maintain both concepts, both the concept of discrimination and affirmative action.

There are a lot of proposals to lessen the reporting obligations of employers. I have no real problem with those proposals except perhaps in seeing them there would be some hidden problems. I understand that contractors with 250 to 500 employees would not have to file as extensive reports as they do now. I will confess, as a former Government official, we never had the people to read all those reports. I think the important thing is we ask employers to keep records that will be useful to us when we make an audit. We can see them, and they can audit themselves, not that they fill out lots of forms that then get filed away in file cabinets.

However, in the construction area I am somewhat more concerned. Currently, construction contractors fill out form 257, which shows each craft and class and the number of hours worked during the week, and the sex and race of the people performing those hours of work. I understand the new proposal would be to limit that report requirement to construction contractors with 50 or more employees. Eighty percent of the construction industry has less than 20 employees, so that would be such a substantial reduction in reports that it might make it difficult to continue to target enforcement dollars. But I would want to reserve judgment on that until I saw the actual proposed regulations.

One of the more serious proposals that the new administration has come up with is a 5-year moratorium. We have already knocked out 75 percent of the little contractors with the new triggers for number of employees and money, and then this second provision would apply to the big contractors. It would say that if they have an affirmative action plan and it has been reviewed by the Government, and if in addition they had some form of job-training linkage, either with the Employment and Training Administration of the Department of Labor—and it is very general as to what that would be—or some kind of approved job-training program of their own, that they would then be free from any audit for a period of 5 years.

Now, as an old enforcement person, I don't think you can achieve compliance when you tell people you won't be back for 5 years. That doesn't mean that the new administration shouldn't target its resources perhaps better than we did, and say if people have that kind of program we only need to look at *x* percent of them; we don't need to look at every one every year.

In our proposed regulations that were issued on December 30, we were going to go recommend a 2-year audit. But we maintained for ourselves the possibility of going more often. It is very important that the contractor think you can audit more often if you receive a lot of complaints, and that you not give away that weapon in advance of finding out how they are going to perform with their new program.

The proposal also eliminates what we called the affirmative action plan summary. I said just a few moments ago that we never had enough people to look at all these reports, and one of the reports we didn't even attempt to look at was the affirmative action plan. This meant that we frequently went to establishments and found that they had never even done an affirmative action plan. In targeting our enforcement resources, we had no way of knowing who was preparing affirmative action plans and who wasn't. So, what we perceived would be the function of the summary. If you got a simple summary that said "here are those for minorities and women in the next several years," you would at least know someone went through the effort. And if you didn't get a summary, that would give you a good idea of which employer you ought to go look at.

We had another reason for adopting that. The court told us to do exactly that in the Alameda County case, and also in the WEAL consent degree. I think it would be very unfortunate to drop what was intended to be a simplified report and one that would aid the Government in targeting its resources more effectively.

The proposals will also do away with preawards which, as you know, was the mechanism we used when a large contract was about to be awarded. We would go do a compliance check to see whether or not that contractor should even get the contract.

Obviously, that is our point of greatest leverage. That is the point at which the contractor is most likely to be willing to adopt a creative affirmative action program in order to obtain that highly desirable Government contract.

Now, there is no question that the preaward mechanism needed help. It had overburdened the system to the point that we were only doing preawards and no regular compliance reviews. For that reason, in the regulations issued on December 30, 1980, we ourselves had made some changes in the preaward, recognizing there were problems. Instead of the old test of every $1 million contract you do a preaward, we added some criteria that there should be at least 250 employees and that the contractor was not reviewed for a period of 2 years or more.

However, as I indicated earlier, we retained the authority to do preawards of smaller companies who had been audited more frequently if we felt there was reason to do so, such as employee complaints—and we gave about six other factors that would trigger a preaward investigation for a smaller company.

In order to make the preawards more effective, we put a requirement on the contracting agencies to give us more notice of contract award, and we also developed what we called the preliminary enforcement hearing, which was a very expedited process so that compliance or noncompliance could be determined with a hearing prior to the award date of the contract.

Now, all of that is thrown out by the new administration's proposal and they would simply do away with preawards altogether.

Perhaps one of the more controversial parts of the proposal is the question of backpay. I note that in the July 14 notice there is at least a hint to the public that that may still be an open issue. I hope it is still an open issue. I have learned, however, that in the last 2 weeks OFCCP has declined offers of backpay awards, one negotiated by the EEOC and some private parties, and Reardon Steel, and another one negotiated on behalf of a private plaintiff by OFCCP and Ohio State. In both those cases they have declined backpay, which makes me worry that the July 14 proposal may not be as openminded as it seems on its face.

I would be most distressed if we were to backtrack on the issue of backpay. As the Supreme Court recognized in the Albermarle case in dealing with the same issue under title VII, one of your most effective sanctions is the sanction of backpay.

Second, how can you be in compliance if you don't correct the condition of the affected class that has been subjected to discrimination?

Now, there are certainly things that can be done to answer some of the fears of backpay. Some of the fears expressed are there is no statute of limitations in the Executive order, that under title VII you can't get backpay for more than 2 years prior to the charge being filed. There is a fear expressed that the Department will ask for 12 and 15 years of backpay.

Well, let me say in all the years I was at the Department we never asked for that kind of money. You would have put people out of business. In the A.T. & T. case, the largest employer in the country, we settled for something like $350 a person. Admittedly, that came out to many millions because A.T. & T. is a large employer. However, those women and minorities suffered much more than $350 a person but we had to be realistic about what was affordable and what in a total package would be effective and meaningful relief.

If those are the fears that the employers are coming to the new administration with, they certainly can be addressed in some less meat hatchet way than repudiating the concept of backpay.

Now, this gets me back to my professional colleagues who write all these law review articles telling you that back pay should be eliminated. I would only say in response that there have been all kinds of laws which haven't explicitly mentioned back pay as a remedy, where the courts have inferred it as a part of appropriate and full relief. And the Executive order certainly provides that authority to the Department of Labor, since it states in section 202, paragraph 6, that the Secretary can provide in regulations such other sanctions and remedies as he deems appropriate. It is certainly appropriate in the right kind of case to provide back pay.

There are some court cases that suggest that back pay is, in fact, an appropriate remedy—and I have cited those in my written statement.

I have already mentioned in the construction area that I think our two concerns are what happens to the goals and timetables for minorities and women. Those proposals were issued also back in December of 1980 and earlier ones in 1978. They were terribly critical, because although we had some better plans in a few isolated cities, we had no nationwide goals and timetables for the construction industry. Chicago had good goals; New York had good goals. And then all kinds of cities had no goals at all. And although I am certain we could improve the data base on which those goals were promulgated, I think it would be a real step backward to hold them up or to subject them to any extensive review in any way.

Certainly our experience in coal mining demonstrates that goals for women in construction can be met if they are maintained.

Mr. Chairman, I don't want to monopolize the time this morning. There are lots of other changes that are made in the proposals, particularly in the sex guideline section, which I think are petty and unfortunate and fail to provide adequate guidance to the public. But since they are well established in the law, they probably can be relied on, even though they are taken out of the regs. But I might also indicate my concern that the changes in the civil rights regulations for the Department have not stopped at the Executive order. I was very distressed to look at their most recent agenda of regulations to see that the title VI regulations have been removed from the agenda. As you may know, the Department I think is only one of three agencies that has no Title VI regulations. These regulations have been at Justice for over a year. They were finally sent back to the Department in November, and I would think it is critical, at a time when so much of the CETA program has been demolished, that we insure that what is left go to disadvantaged people. The country club regs have been withdrawn.

Finally, in conclusion, I would just like to say that I think this cutback comes at a very unfortunate time. The Executive order program was plagued from the outset with inefficiency and problems, and I think it had finally, after the reorganization and after the decision to target systemic discrimination, begun to make itself felt in American business, and had just begun to become an effective program. If these regulations are adopted as proposed, it seems to me that momentum is destroyed and we are back to where we were 7 or 8 years ago.

Thank you, Mr. Chairman.

Mr. HAWKINS. Thank you, Ms. Clauss, for a very thoughtful and comprehensive presentation. You have answered many of the questions I think in advance. However, there are several I would like to get some clarification on.

It would appear from what you have said that we are moving away—I think you made reference to this in your very last one or two sentences—from the systemic approach to one of an individual-complaint basis.

Is that a true reservation?

Ms. CLAUSS. I think that is, Mr. Chairman, yes.

Mr. HAWKINS. So that it would be a very destructive move, to say the least, if the Government is not in a position to attack systemic discrimination in the manner in which it has been developed. Through the systemic discrimination approach, it would be possible to reach the greatest number of individuals with the least amount of effort and expense.

Ms. CLAUSS. I think this is going to result in large part if you substitute nondiscrimination for affirmative action.

The figures from A.T. & T. are just terribly encouraging. I saw some new ones last month. They are doing substantially better today than they were when we relieved them from the decree. Once they had that system in place, they were able to carry forward a very meaningful affirmative action program that provides relief to literally thousands and thousands of people. That is the way the Government's enforcement dollar should be spent, in this kind of affirmative action effort.

Frankly, for some years to come, EEOC is going to continue to have to bear the brunt of those individual complaints. There has to be somewhere in Government that you have a real weapon to insure systemic change, and that best weapon is the Federal dollar that is represented by all those procurement contracts.

Mr. HAWKINS. From all of the witnesses thus far in these series of hearings, I would say some 40 or 50 adverse effects have been noted with respect to weakening of the civil rights enforcement. I can't recall a single instance in which the right of the complainant—that is, the person being discriminated against—has in any way been improved.

Are you aware, in the suggested regulations that we have been hearing about—because we don't have anything formally before this committee or any other committee—that there has been any suggestion that would improve the situation with respect to those who are actually being discriminated against? Have their rights in any way been improved?

Ms. CLAUSS. I am aware of no improvement for the discriminatee.

Mr. HAWKINS. So there has been more or less a one-sided action which does not apparently take into consideration the fact that discrimination is very difficult in the first instance to prove and systemic discrimination is almost systematically being eliminated. We are getting back to the situation in the very early days of this subcommittee in which a great number of complaints were building

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up by individuals who had cases that had been pending for several years without any reconciliation whatsoever. They lost interest, some had gone on and passed away, some had given up hope, and some were charging this committee even with being dilatory, in that we were tolerating these long delays and the backlog of cases, which just made the act itself suspect as being of any value whatsoever.

Are we in a sense returning to that situation?

Ms. CLAUSS. In my opinion, we are, Mr. Chairman. I am sure in the administration they will maintain "Look at all the enforcement dollars we are freeing up that can be better used." One, I don't know how they are going to be better used if you do away with the most important aspects of the program. Second, I would be more worried that those enforcement dollars will simply be a part of the budget cuts, and that any improvement and efficiency won't go to those people who are suffering the effects of discrimination.

Mr. HAWKINS. On the question of backpay, which is a very critical issue involved in this discussion, would you by any chance favor some type of limitation, some type of affordable standards that might be reasonable with respect to the complainant, and at the same time not too severe on the respondent, something, let's say, similar to a title VII limitation of a period of time? Have you given any thought to that?

Ms. CLAUSS. Mr. Chairman, I think that creative minds could do something useful in that area. I would not want to see title VII just lifted and moved over verbatim, particularly the 180-day limitation on filing a complaint. But certainly I think there could be some maximum limitations. As I said, I know of no case where the Department has actually gone back 6, 7, and 8 years.

Mr. HAWKINS. Although they do have the potential to do so.

Ms. CLAUSS. They have the potential. But since they have never done it, I don't suppose you would be giving up a great deal to work out some respectable guidelines for backpay.

Mr. HAWKINS. You also mentioned there is some relief that might be afforded to smaller employers, and that at the time you were in the throes of leaving the Solicitor's position this was being considered.

Without getting into some of the more specific one because of the limitation of time, I would hope that in revising and submitting your statement you would include what you consider to be some specific things that could be done to grant reasonable relief in reporting and record keeping and things of that nature with respect to small businesses. If you would do so, I think it would be very helpful to this committee.

Ms. CLAUSS. I would be happy to do that, Mr. Chairman.

Mr. HAWKINS. Thank you.

Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman. I will be brief, Ms. Clauss, because your testimony has been extremely thorough and incisive. Rather than ask questions, I think I will make some suggestions as to what perhaps your submissions could include or embellish.

I am impressed with the reports of your success in improving the litigation of the Department and the litigation procedure. However, there is one thing I am concerned about. It is unfortunate that the new regulations which weakened the whole compliance program were not subject to what one might call the normal procedures—Am I right? Was there notice?

Ms. CLAUSS. The new Reagan regulations?

Mr. WASHINGTON. Right.

Ms. CLAUSS. Well, presumably they will give us notice some day. There hasn't been anything for us to look at yet.

Mr. WASHINGTON. I don't know whether or not there is any legal impediment to the process which they are pursuing. I would hope there is one.

Is there perhaps some procedural violation that they have encountered in the process of promulgating these new regulations?

Ms. CLAUSS. I am very surprised, Mr. Congressman, not to see a whole raft of suits challenging the withdrawal of these final orders, which were withdrawn without notice and comment. I know the unions have filed a few in the health and safety field. Just as a legal scholar, I find that a very interesting issue.

In terms of their final proposal, their only legal obligation will be to give the public 60 days, and we have yet to see if they will do that. I assume they will, because I assume that delay is not something that particularly concerns them. With the new regulations withdrawn, we are operating under the old system and that has so many deficiencies in it that the discriminatee is not well served.

Mr. WASHINGTON. Would your submission perhaps include some suggestions as to perhaps how we could wreak havoc with those proposed regulations if they're ever put forward?

Ms. CLAUSS. I certainly will include that.

Mr. WASHINGTON. I would appreciate that very much.

One other question, because we are pressed by witnesses piling up at the door. Do you have any estimates as to the number of jobs which will be removed from coverage, assuming these new regulations come forward, the number of total jobs that might not be covered?

Ms. CLAUSS. I will try to provide that for the record.

Their estimate is 25 percent. However, I believe it is higher because of where the growth in jobs is.

Mr. WASHINGTON. If you could put that in gross dollar figures—it's a regular chamber of horrors in terms of what will happen if these regulations ever come forward—so that the American people can get some idea about what is getting between the cracks, so to speak.

I won't ask any further questions, Mr. Chairman.

Mr. HAWKINS. Miss Baum?

Ms. BAUM. No questions.

Mr. HAWKINS. Miss Clauss, we again appreciate your testimony, and look forward to your revised and formal statement to the committee. The record will be kept open.

Ms. CLAUSS. Thank you.

Mr. HAWKINS. The next witnesses will consist of a panel. I understand that Mr. Riddick is not in the audience at this time. Then I call at this time Mr. James Compton, President of the Chicago Urban League, and the Reverend B. Herbert Martin, Sr., executive secretary of the Chicago South Side NAACP Branch. Would those two witnesses come forward and be seated at the witness table.

Mr. Compton, suppose we hear from you first. We do have prepared statements from both of you, and without objection, the two prepared statements will be entered in the record in their entirety. The witnesses may find it desirable to deal only with the highlights of them, because the statements will appear in the record as they have been presented. But you can deal with it as you so desire.

STATEMENT OF JAMES COMPTON, PRESIDENT, CHICAGO URBAN LEAGUE

Mr. COMPTON. Thank you very much, Mr. Chairman, and my Congressman in the First Congressional District, Harold Washington, and colleauges on this distinguished committee. I am honored and pleased to be here today to testify on behalf of the Chicago Urban League against the revision in affirmative action regulations proposed by the Office of Federal Contract Compliance.

The Chicago Urban League has a history of expanding the range of opportunity available to Chicago's black and poor citizens for 65 years, and it is within this context that I appear before you this morning.

As it has been throughout our history, today our primary concern is employment and access to jobs for those who for far too long have been systematically denied the opportunity to work. There is no need, I believe, to recite before this subcommittee the pervasive history of the racial discrimination in employment that has dishonored this country, and with black unemployment rates consistently at least double the rates for white unemployment, can anyone doubt that we have not eradicated the past effects of such discrimination?

From its very beginning, the Office of Federal Contract Compliance has had the potential to be a dominant force in eliminating employment discrimination. The power to bar Federal contractors from doing further business with the Government if they are not making significant progress toward eliminating the effects of discrimination is very likely the most potent weapon in the affirmative action arsenal. I believe it is emphatically true that when money is involved—either in the form of a contract to be gained or a penalty to be paid—people and institutions are less likely to discriminate.

Unfortunately, the Office of Federal Contract Compliance has far too frequently fallen short of realizing its full potential. In the last few years, however, I believe it is fair to say that it has taken a number of steps toward becoming a significant force. And rather than relying on a number of contracting agencies to monitor affirmative action compliance, the Office of Federal Contract Compliance has taken this crucial role for itself.

The use of debarment sanctions has increased significantly. Fully one-half of all debarments have been imposed just in the past 4 years. Over the past few years the Office of Federal Contract Compliance has also been engaged in a serious and exhaustive effort to revise its regulations, a process that included consulting with both employers and representatives of minority groups, as well as women. It seemed that the Office of Federal Contract

Compliance finally was beginning to assert itself and assume the role of a leader.

The changes now being contemplated by the Reagan administration represent a significant retreat from the growing level of commitment and forceful effort of the past few years. But before turning to the specific rule changes, I feel that it is also important to comment for the record on the way these changes are being developed.

As you know, rather than providing a written draft of the changes being proposed, this administration has only made some vague tentative decisions which were revealed at a single briefing for the representatives of civil rights and womens groups. Nor has there been any consultation in the process of developing these changes. As far as we know, the administration's goal is to reduce affirmative action reporting requirements, not to improve the effectiveness and efficiency of the program.

When considering the tentative decisions on revising regulations, we are saddened by a sense of having been there before. Less than 5 years ago, in the waning days of the Ford administration, in a room a few miles from here, we stated our opposition to a number of proposals that are again being suggested today. They were bad ideas then, and the passage of time has not improved them. They remain bad ideas today.

The administration proposes to reduce the number of employers who would be required to file written affirmative action plans. At present, as this committee well knows, an employer with 50 or more employees and a Federal contract greater than $50,000 must file a written plan describing the racial and sexual makeup of his or her workforce and his goals, if necessary, for hiring minorities and women.

The administration proposes to change these criteria to apply to employers with at least 100 or perhaps 250 employees and with contracts of at least $250,000 or perhaps $1 million. The specific amounts are as yet undecided, or perhaps simply unstated.

To illustrate the impact of these changes, one combination of employee and contract size can be cited. If coverage is limited only to employers with more than 100 employees, and with contracts exceeding $1 million, the Department of Labor estimates that the number of companies covered would be reduced by 75 percent, from 17,000 to 4,200. The number of employees covered would decline from 27 million to 20 million.

We find such a retreat wholly unacceptable. A written affirmative action program is an indispensable tool, a tool for monitoring compliance, for subtly pressuring contractor compliance, and for forcing self-analysis and examination on the part of the employer who simply may not have recently looked at the composition of his workforce.

If the Office of Federal Contract Compliance does not have adequate staff to review all the plans, the solution certainly is not to reduce the number of employers required to have plans. One solution could be to maintain coverage and monitor compliance on a sample basis, classifying employers by size or industry, and then randomly monitoring within the classification. As OFCC gains experience with such a program, it could target its enforcement efforts to troublesome industries or areas.

This same general approach is followed by the Internal Revenue Service which clearly has to monitor far more tax returns than its resources would permit. But fortunately for the Federal Government, IRS did not decide to resolve its excessive monitoring responsibility by exempting massive categories of taxpayers from filing returns. We should not follow such a retreatist course of action when the commodity at hand is human justice as opposed to tax dollars.

The proposed changes would eliminate the requirement to report on affirmative action progress through an annual summary. The administration suggests that progress could be measured by using EEO-1 reports.

Now, we realize that the rules requiring annual summaries have not yet been implemented, though they are in effect. Nonetheless, we feel that they should be retained.

In addition, they do not contain the information on hiring goals and rates which are critical to the concept of affirmative action and to the meaningful assessment of progress being made by such programs.

The proposed changes would eliminate preaward compliance reviews under certain circumstances. We are unalterably opposed to this. A preaward review is the only way the government can be sure that it is not giving a contract to a company that discriminates in employment. Such reviews penalize those that discriminate and reward those that do not.

In terms of these regulations, the OFFC's mission is to eradicate employment discrimination. The effectiveness with which it pursues this mission is not going to be improved by awarding contracts to those who discriminate.

This proposed change certainly does not improve the effectiveness of contracting agencies by allowing them to commit their resources to contractors who subsequently, in the middle of a contract, are found to be in violation of nondiscrimination requirements. While the elimination of preaward reviews gives the appearance of improved efficiency by reducing the time needed to award contracts, it is my belief that in the longer run it leads to more serious damage to the effectiveness of either the contracting agency or OFCC.

The proposed changes would give a 5-year exemption from compliance reviews to contractors participating in approved training programs. This is the vaguest of the administration's proposals thus far. Many details would need to be spelled out before we could comment on this revision with any degree of certainty. On the face of it, however, this change probably would gut affirmative action.

First, 5 years is far too long a time in a fast-changing economy, and in a government which appropriately should show some reluctance to commit resources beyond the assured 4-year tenure of a given administration.

Second, what is to keep a company from effectively ignoring or dismantling an initially adequate affirmative action program during the 5-year exemption period? Minimally, there should be a mechanism established for the Office of Federal Contract Compliance to respond to and address complaints of discrimination during this exemption period.

Third and finally, employment and training programs do not always equitably serve minorities and women. And they are most often oriented toward entry-level jobs and employees. This proposal seems to indicate a willingness to redefine affirmative action as only applying to the lowest rungs of the organizational ladder. We at the Chicago Urban League are not willing to accede to so restrictive and demeaning a change in definition.

In summary, we are opposed to the suggested changes and are disturbed with the process being used for generating these suggestions. We are not opposed to the general goal of reducing overly burdensome paperwork provided that the means for doing so does not essentially destroy the heart of affirmative action programs. We believe that the goal should be to achieve better enforcement of affirmative action. This I do not believe can be achieved by doing less work, but by working more efficiently and effectively.

If this administration can suggest changes that serve the goals of better enforcement, more employment opportunities for minorities, and reduced reporting burdens for employers, then we could support them. But in our judgment, these resurrected proposals from the Ford administration neither achieve these ends nor are they intended to do so. These proposals are consistent with and part of the Reagan administration's general commitment to reduce Government regulation of business. As such, these changes are largely an attempt to elimininate Government involvement in the fight for nondiscrimination and affirmative action. While Government may overregulate some parts of our lives, we cannot support the notion of retreat of Government responsibility for justice and equal opportunity in this society.

The Chicago Urban League opposes these changes as we did 5 years ago. Hopefully there is enough good sense and judgment and concern for minorities and women in our Government and among our people to dispose of these regulatory changes in the same manner as was done 5 years ago.

Mr. Chairman and members of the committee, thank you for the opportunity to express our views on this most important subject.

[The prepared statement of James Compton follows:]

PREPARED STATEMENT OF JAMES W. COMPTON, PRESIDENT, CHICAGO URBAN LEAGUE

Good morning, I am James W. Compton, President of the Chicago Urban League. I am here today to testify against the revision in affirmative action regulations proposed by the Office of Federal Contract Compliance,

The Chicago Urban League has been a leader in expanding the range of opportunity available to Chicago's minority and poor citizens for 65 years. We are an interracial, not-for-profit agency working to improve living conditions and race relations through research, education, and advocacy. We are active in housing, education, voter registration, employment, and other areas.

As it has been throughout our history, today our primary concern is employment and access to jobs for those who for far too long have systematically been denied the opportunity to work. There is no need to recite to this subcommittee the pervasive history of the racial discrimination in employment that has dishonored our country. And, with black unemployment rates consistently double the rates for white unemployment, can anyone doubt that we have not eradicated the past effects of such discrimination?

From its inception the Office of Federal Contract Compliance has had the potential to be a dominant force in eliminating employment discrimination. The power to bar Federal contractors from doing further business with the Government if they are not making significant progress toward eliminating the effects of discrimination is very likely the most potent weapon in the affirmative action arsenal. When money is involved—either in the form of a contract to be gained or a penalty to be paid—people are less likely to discriminate.

Unfortunately, the OFCC has far too frequently fallen short of realizing its full potential. In the last few years, however, it has taken a number of steps toward becoming a significant force. Rather than relying on a number of contracting agencies to monitor affirmative action compliance, the OFCC has taken this crucial role for itself. The use of debarment sanctions has increased significantly: Fully one-half of all debarments have been imposed in the past 4 years. Over the past few years the OFCC has also been engaged in a serious and exhaustive effort to revise its regulations; a process that included consulting with both employers and representatives of minority groups and women. It seemed that the OFCC finally was beginning to assert itself and assume the role of a leader.

The changes now being contemplated by the new administration represent a significant retreat from the growing level of commitment and forceful effort of recent years. But before turning to the specific rule changes, we feel that it is important to comment, for the record, on the way these changes are being developed.

Rather than providing a written draft of the changes being proposed, the administration has only made some vague "tentative decisions" which were revealed at a single briefing for the representatives of civil rights' and women's groups. With no opportunity to examine the details of planned changes, we are asked to react. Nor has there been any consultation in the process of developing these changes. As far as we can tell, the Administration's goal is to reduce affirmative action reporting requirements, not to improve the effectiveness and efficiency of the program.

When considering the "tentative decisions" on revising regulations, we are saddened by a sense of having been here before. Less than 5 years ago, in the waning days of the Ford administration, in a room a few miles from here, we stated our opposition to a number of proposals that are again being suggested today. They were bad ideas then and the passage of time has not improved them; they remain bad ideas today.

1. The administration proposes to reduce the number of employers who would be required to file written affirmative action plans. At present, an employer with 50 or more employees and a Federal contract greater than $50,000 must file a written plan describing the racial and sexual make-up of his workforce and his goals, if necessary, for hiring minorities and women. The administration proposes to change these criteria to apply to employers with at least 100 or perhaps 250 employees and with contracts of at least $250,000 or perhaps $1 million. The specific amounts are as yet undecided—or perhaps simply unstated. To illustrate the impact of these changes one combination of employee and contract size can be cited. If coverage is limited only to employers with more than 100 employees and with contracts exceeding $1 million, the Department of Labor estimates that the number of companies covered would be reduced by 75 percent, from 17,000 to 4,200. The number of employees covered would decline from 27 million to 20 million.

We find such a retreat wholly unacceptable. A written affirmative action program is an indispensable tool—a tool for monitoring compliance, for subtly pressuring contractor compliance, and for forcing self-analysis by the employer who simply may not have recently looked at the composition of his work force. If the OFCC does not have the staff to review all the plans, the solution is not to reduce the number of employers required to have plans. The solution is to maintain coverage and to monitor compliance on a sample basis, classifying employers by size or industry and then randomly monitoring within the classification. Indeed, as OFCC gains experience with such a program, it could target its enforcement efforts to troublesome industries or areas.

This same general approach is followed by the Internal Revenue Service which clearly has to monitor far more tax returns than resources permit. Luckily for the Government, IRS did not decide to resolve its excessive monitoring responsibility by exempting massive categories of taxpayers from filing returns. And we should not follow such a retreatist course of action when the commodity at hand is human justice rather than tax dollars.

2. The proposed changes would eliminate the requirement to report on affirmative action progress through an annual summary. The administration suggests that progress could be measured by using EEO-1 reports. We realize that the rules requiring annual summaries have not yet been implemented though they are in effect. Nonetheless, we feel that they should be retained. Periodic reports on affirmative action progress are necessary to monitor progress and also would be vital to

any efforts to improve the efficiency with which limited resources can be targeted to those contractors requiring enforcement action. The proposed use of EEO-1 reports is simply inadequate for these purposes. EEO-1 reports use job categories which are too broad. In addition they do not contain the information on hiring goals and rates which are critical to the concept of affirmative action and to the meaningful assessment of progress being made by such programs.

3. The proposed changes would eliminate pre-award compliance reviews under certain circumstances. We are unalterably opposed to this. A preaward review is the only way the Government can be sure that it is not giving a contract to a company that discriminates in employment. Such reviews penalize those that discriminate and reward those that do not. In terms of these regulations, the OFFC's mission is to eradicate employment discrimination; the effectiveness with which it pursues this mission is not going to be improved by awarding contracts to those who discriminate. And this proposed change certainly does not improve the effectiveness of contracting agencies by allowing them to commit their resources to contractors who subsequently, in the middle of a contract, are found to be in violation of nondiscrimination requirements. While the elimination of preaward reviews gives the appearance of improved efficiency by reducing the time needed to award contracts, in the longer run it leads to more serious damage to the effectiveness of either the contracting agency or OFCC.

4. The proposed changes would give a 5 year exemption from compliance reviews to contractors participating in approved training programs. This is the vaguest of the administration's proposals. Many details would need to be spelled out before we could comment on this revision with any degree of certainty. On the face of it, however, this change probably would gut affirmative action. First, 5 years is far too long a time in a fast changing economy and in a Government which appropriately should show some reluctance to commit resources beyond the assured four year tenure of a given administration. Second, what is to keep a company from effectively ignoring or dismantling an initially adequate affirmative action program during the 5-year exemption period? Minimally, there should be a mechanism established for OFCC to respond to and address complaints of discrimination during the exemption period.

Third and finally, employment and training programs do not always equitably serve minorities and women. And they are most often oriented toward entry-level jobs and employees. This proposal seems to indicate a willingness to redefine affirmative action as only applying to the lowest rungs of the organizational ladder. We at the Chicago Urban League are not willing to accede to so restrictive and demeaning a change in definition.

In summary, we are opposed to the suggested changes and are disturbed with the process being used for generating these suggestions. We are not opposed to the general goal of reducing overly burdensome paperwork provided that the means for doing so does not essentally destroy the heart of affirmative action programs. We believe that the goal should be to achieve better enforcement of affirmative action. This will not be achieved by doing less work, but by working more efficiently and effectively.

If the administration can suggest changes that serve the goals of better enforcement, more employment opportunities for minorities, and reduced reporting burdens for employers, then we could support them. In our judgment these resurrected proposals from the Ford administration neither achieve these ends nor are they intended to do so. These proposals are consistent with and part of the Reagan administration's general commitment to reduce Government regulation of business. As such, these changes are largely an attempt to eliminate Government involvement in the fight for nondiscrimination and affirmative action. While Government may over-regulate some parts of our lives, we cannot support the abnegation of Government responsibility for justice and equal opportunity in our society.

The Chicago Urban League opposes these changes as we did 5 years ago. Hopefully, there is enough good sense and concern for minorities and women left in our Government and among our people to dispose of these regulation changes in the same manner as was done 5 years ago.

Thank you for this opportunity to express our views on this most important subject.

Mr. WASHINGTON [presiding]. Thank you, Mr. Compton.

We will hear from the remainder of the panel. Rev. Herbert Martin of the NAACP will make his statement, and then a very brief statement from Mr. Paul King, the director of the National Association of Minority Contractors, who is substituting for the

Rev. Jesse Jackson, and then we will question the entire panel. Rev. Martin?

STATEMENT OF REV. B. HERBERT MARTIN, SR., EXECUTIVE SECRETARY, CHICAGO SOUTH SIDE NAACP BRANCH

Reverend **Martin**. Good morning, Chairman Augustus F. Hawkins, Congressman Harold Washington, and members of the Subcommittee on Employment Opportunities, my brothers and sisters.

Mr. **Washington**. I am certain that Congressman Hawkins would welcome the promotion, but he would have to run for it.

Reverend **Martin**. All right.

I am Rev. B. Herbert Martin, the executive secretary of the Chicago Southside NAACP, and I am speaking this morning in order to provide some testimony on behalf of the amended Executive Order 11246, of the Office of Federal Contract Compliance program.

The Chicago NAACP has maintained an ongoing relationship with the Office of Federal Contract Compliance program in the area of citing and referring contract violators, joint monitoring of contractor abuse, and providing testimony in compliance review hearings on behalf of complainants referred to our office. The Chicago Southside NAACP has been working collaboratively with region 5. For the sake of enlightenment, allow me to establish a crucial area of responsibility that region 5 is charged with here in the area of contract compliance.

Region 5 covers a six-State area containing a population of 41 million people in the States of Indiana, Minnesota, Ohio, Wisconsin, Michigan, and Illinois. This six-State area has 100 congressional delegates and representatives and represents 22 percent of the Nation's population. It has 15 area offices with 1,500 workers. At least 27 percent of all Government contracts in the country are within region 5's jurisdiction.

It is also important to note that 30 percent of the major U.S. firms are headquartered in region 5. The Chicago Loop Office is responsible for 7,000 companies in Illinois and 4,500 in the Chicago metropolitan area alone. Of the established employers who have 500 or more employees, 40 percent of those employers are located in region 5. According to the Bureau of Labor Statistics, one out of every four workers is located in region 5.

It is both spurious and questionable why the regulations governing the enforcement activity of the Office of Federal Contract Compliance program would need to be amended under Executive Order 11246. Recent employment gains under the Executive order program have resulted in 21 agreements reached covering 1,449 workers, which represents 66 percent of the national total, in addition to $1.2 million in back pay or other considerations, representing 59 percent of the national total. This is not the time to weaken or dilute the Executive order program.

The Reagan administration's tentative decision to decrease employer coverage is an attempt to bottleneck enforcement under the Office of Federal Contract Compliance programs. This office has taken a strong and effective role toward providing redress for those who seek relief under the program. It has produced 250 show cause letters of alleged violations and has provided effective investigation of those violations. The attempt to decrease employer coverage will create more administrative red tape as a result of critical enforcement positions being cut out or completely eliminated. The Reagan administration's tentative proposals have shown also to be seriously antibackpay.

The Chicago Southside NAACP deems this attitude not to be in the best interest of the complainant during investigative reviews.

We also view, with a very cautious eye, the Reagan administration's tentative decision to reduce employer affirmative action reporting requirements. The NAACP's position on this provision is crucial and uncompromising:

> Contractors who spend public funds must be required to report how those public funds are being spent. Failure to do that is a violation of the public's trust. They need to report and report as often as possible.

To reduce the affirmative action reporting requirements is unfair and unjust. We have found that that kind of attitude on the part of the Reagan administration is demeaning, devastating, and antiminority. Such a move proposed in the amended order will push minority gains all the way back to the 1950's, if not farther. We shall not retreat to that stage, and we will not concede to this kind of disenfranchisement of the poor and minority masses.

The issue of the administration's tentative decision to grant 5-year exemptions from compliance reviews to contractors with linkage or other approved training programs is upsetting and most disheartening. There are pending cases where contractors have not been complying even on an annual basis. Mr. Chairman and the committee, I ask you: How can these same contractors be expected to comply on a 5-year basis?

The proposed amendment to grant 5-year exemptions from compliance review threatens to take all the guts and enforcement power out of the Executive order program and that must not be allowed.

The Chicago Southside NAACP is gravely concerned that the Executive Order 11246, as amended, will eliminate 900 employees from the Government payroll. The Reagan administration maintains that the order will save $2 billion a year to contractors and eliminate large amounts of person hours related to filing compliance review reports. But what the amended Executive order will not do is vigorously safeguard and protect the rights of those who have historically suffered prior to the Executive order program. This is not a time for retrenchment of minority gains or to retreat from past administrations' commitment toward barring employment discriminaton. The Chicago Southside NAACP and other civil rights organizations will not stand for that.

We urge that the Committee on Education and Labor, specifically the Subcommittee on Employment Opportunities, closely examine what grievous effect the proposed amended Executive Order 11246 will have on minorities seeking relief through the Executive order program.

The Chicago Southside NAACP would like to thank the committee for allowing me and the 10,000 members whom I represent an opportunity to provide testimony this morning. We pledge to you our continued support to monitor all Federal enforcement of equal employment laws and all affirmative action programs as long as public and/or private contractors are involved and operating under discriminatory conditions for all minorities and for all disenfranchised individuals.

Thank you very much.

[The prepared statement of Rev. Herbert Martin follows:]

Prepared Statement of Rev. B. Herbert Martin, Executive Secretary, Chicago Southside NAACP

Good Morning, Congressman Augustus F. Hawkins, Congressman Harold Washington, and committee members of the Subcommittee on Employment Opportunities. I am Reverend B. Herbert Martin, Executive Secretary, speaking on behalf of the Chicago Southside NAACP. I am speaking this morning in order to provide congressional testimony on behalf of the amended Executive Order 11246, of the Office of Federal Contract Compliance Program.

The Chicago NAACP has maintained an on-going relationship with the Office of Federal Contract Compliance Program in the area of citing and referring contract violators, joint monitoring of contractor's abuse, and providing testimony in compliance review hearings on behalf of complainants referred to our office. The Chicago Southside NAACP has been working collaboratively with Region 5. It is important to establish the crucial area of responsibility that Region 5 is charged with in the area of contract compliance.

Region 5 covers a six state area containing a popoulation of 41,000,000 people in the State of Indiana, Minnesota, Ohio, Wisconsin, Michigan, and Illinois. This six state area has 100 congressional delegates and representatives and represents 22 percent of the nation's population.

It has 15 area offices with 1,500 workers. At least 27 percent of all government contracts in the country are within Region 5 jurisdiction. It is also important to note that 30 percent of the major U.S. firms are headquartered in Region 5. The Chicago Loop Office is responsible for 7,000 companies in Illinois and 4,500 in the Chicago and metropolitan area. Of the established employers who have 500 or more employees, 40 percent of those employers are located in Region 5. According to the Bureau of Labor Statistics, one out of every four workers are also located in Region 5.

It is both spurious and questionable why the regulations governing the enforcement activity of the Office of Federal Contract Compliance Program would need to be amended under Executive Order 11246. Recent employment gains under the Executive Order Program has resulted in 21 agreements reached covering 1,449 workers, which represents 66 percent of the national total. In addition to $1.2 million dollars in back pay or other consideration, representing 59 percent of the national total. This is not the time to weaken or dilute the Executive Order Program.

The Reagan Administration's tentative decision to decrease employer coverage is an attempt to bottleneck enforcement under the Office of Federal Contract Compliance Program. This Office has taken a strong and effective role toward providing redress for those who seek relief under the program. It has produced 250 "show-cause," letters of alleged violations and has provided effective investigation of violations. The attempt to decrease employer coverage will create more administrative red tape as a result of critical enforcement positions being cut or eliminated. The Reagan Administration's tentative proposal changes has shown to be "anti-back pay."

The Chicago Southside NAACP deems this attitude to be not in the best interest of the complainant during investigative reviews.

We also view with a wary eye the Reagan Administration's tentative decision to reduce employer affirmative action reporting requirements. The NAACP position on this provision is crucial and uncompromising.

"Contractors who spend public funds must be required to report how those public funds are being spend. Failure to do that is a violation of the Public's trust. They need to report and report often."

To reduce the affirmative action reporting requirements are unfair and unjust! We have found that, that kind of attitude on the part of the Reagan Administration is demeaning, devastating, and anti-minority. Such a move proposed in the amended order will push minority gains back to the 1950's. We shall not retreat to that stage!

The issue of the Administration tentative decision to grant five-year exemptions from compliance reviews to contractors with "linkage," or other approved training program is upsetting and disheartening. There are pending cases where contractors have not been complying even on an annual basis. I ask you, Mr. Chairman and committee members, "How can these same contractors be expected to comply on a five-year basis?"

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The Chicago Southside NAACP is gravely concerned that the Executive Order 11246, as amended, will elimate 900 employees from the government payroll. The Reagan Administration maintains that the order will save $2 billion dollars a year to contractors and eliminate large amounts of person-hours related to filing compliance review reports. But what the amended Executive Order will not do is vigorously safeguard and protect the rights of those who have historically suffered prior to the Executive Order Program. This is not a time for retrenchment of minority gains or to retreat from past administration's commitment toward barring employment discrimination. The Chicago Southside NAACP and other civil rights organizations will not stand for that!

We urge that the Committee on Education and Labor, specifically the Subcommittee on Employment Opportunities, closely examine what grievous effect the proposed amended Executive Order 11246 will have on minorities seeking relief through the Executive order program.

The Chicago Southside NAACP would like to thank the committee for allowing me and the 10,000 member organization an opportunity to provide testimony this morning. We pledge to continue to monitor Federal enforcement of equal employment laws and affirmative action programs as long as public and or private contractors are involved and operating under discriminatory conditions for all minorities and disenfranchised individuals.

Thank you.

Mr. WASHINGTON. The next witness, seated at the table, is Mr. Paul King, director of the National Association of Minority Contractors. Mr. King, I understand you have a 2-minute statement, since you have been taken out of order. Is that correct?

STATEMENT OF PAUL KING, DIRECTOR, NATIONAL ASSOCIATION OF MINORITY CONTRACTORS

Mr. KING. That is correct.

Mr. Chairman and Congressman Washington, I want to thank you very much for allowing me to take part of the committee's time in this important hearing.

I would like to say that in addition to being director of the National Association of Minority Contractors, I served as a special consultant to the Office of Federal Contract Compliance and I would like to say that our organization is vehemently against any weakening of affirmative action programs.

It needs to be stated for the record that affirmative action does work. In Chicago in 1969 in the construction industry, we had less than 5 percent minorities in the apprentice trades. As a result of rigorous enforcement of Executive Order 11246 and street demonstrations, that minority employment of apprentices in the construction industry in the Chicago area has increased now to approximately 19 percent.

It is important to recognize that this weakening of affirmative action requirements is just another step in the *Bakke-DeFunas-*

Weber cases to weaken remedial action for minorities who have been left out.

I caution the committee to also recognize that the Office of Federal Contract Compliance programs should remain in the Department of Labor and not be shifted over to EEOC, which is a continued suggestion by those who oppose affirmative action.

It should also be noted that prime contractors, such as contractors in the construction industry which employ over 3½ million workers, do not seek out minority workers when they work on private jobs. However, when they work on Federal jobs that have affirmative action rules, they do employ women and minorities. A good example is to take a look at the O'Hare extension project that has Federal money and you will see that there are a large number of minority workers. When you go to a private development in the Loop, you will find that there is a dearth of minority workers.

I suggest to you that every economic issue that is now being bandied about, whether it is inflation, recession, energy or defense of the dollar or reduction of Government spending, is going to impact on employment, particularly those that have no voice or little clout.

Mr. Chairman and members of the committee: I would only say to you that if we cannot depend on the Government and you elected officials who are sensitive to keep these programs in place, those of us in the community that recognize the importance of street demonstrations will have only as a choice to go back to what we did in the summer of 1969 and enforce the moral law ourselves.

Thank you very much for this time.

Mr. HAWKINS. May I ask the witnesses at the table to respond to a rather general question? Would there be disproportionate impact on the black community, as opposed to the community at large, as a result of the cutbacks in the enforcement of civil rights acts, including affirmative action? In other words, do you see a specific impact on the black community greater than that on other communities, and do you see any relationship between the reduction or the weakening of the civil rights enforcement acts on the housing, economic development, health, and other aspects of the community as a byproduct of this weakening?

Mr. COMPTON. Already in the city of Chicago unemployment has reached its double-digit figures, and the bulk of those who make up that unemployment statistic are black. We have received recent statistics that in Chicago alone, in the minority community, there are over 600,000 permanently unemployed people. To this number will be added those persons who will be cut out as a result of the retrenchment that is taking place, and that includes those who have been working with CETA and other special programs.

Tradition shows that blacks are the last hired and they are the first to be fired. In earlier testimony you heard that even with A.T. & T., where there has been some substantial improvement in minority hiring, yet the NAACP received last week three employment discrimination complaints against A.T. & T. We can recount that down the line, so definitely our answer is affirmative; that the black community will suffer greatly as a result of the cutbacks and the weakening of affirmative action statutes.

Mr. HAWKINS. Mr. King?

Mr. KING. Mr. Chairman, it can be explained to you very, very clearly. In Chicago the construction industry hovers around $2 billion. Somewhere around 30 to 40 percent of that is publicly assisted, therefore carrying the weight of a requirement to use minority employees. The word minority has become so diluted that it is no longer synonymous with black. Minority now includes every ethnic group that is not of a European extraction and soon it will be inundated with women, which suggests to me that already black workers are seriously jeopardized.

However, what you must recognize is that the makeup of the construction employment force is traditionally white, and the only way that black employment and training can take place in the construction industry is to continue to have the Federal regulations that demand that unions and employers cooperate to train and bring more blacks in. Absent these regulations, or any weakening of these enforcement regulations, you will have a definite and clear signal that blacks, in spite of the competition with other so-called minority groups, will be weakened significantly.

Mr. HAWKINS. Let me rephrase the question to get a little more specific answer.

The statement has been made by the administration that the increase in activity in the private sector as a result of the tax reduction incentives being given to business enterprises, as well as the increased military expenditures, $1.5 trillion in the next 4 or 5 years, and the removal of regulations that bear heavily on business operations, that as a result of all this—which they refer to as supply side economics—that there are going to be so many jobs created that blacks will actually get more jobs rather than fewer jobs, despite the fact that discrimination will be more rampant if we remove the antidiscrimination laws.

Are you saying that you do not anticipate that this will be the situation; that unemployment is actually decreasing under this administration and that there will be more jobs available to blacks in the Chicago area as a result of these administration programs?

Mr. COMPTON. Mr. Chairman, I would like to briefly respond to that.

I don't think there is any significant evidence whatsoever that there is going to be any appreciable increase in employment opportunities of minorities or women under the proposed direction of this administration. The alternatives proposed certainly do not dictate such. When we talk about the increase of the military budget, we are talking about, as was indicated yesterday, the go-ahead on the neutron bomb and things of that nature. It is true that blacks' biggest gains in employment opportunities in this country have come during two disastrous periods: one, when we were fully employed during the time of slavery; and second, during wartime.

Now, I don't think anybody sees those as options or alternatives for employment that we should pursue. Even if—and I doubt this to be true because we have tried this before, too—the private sector, through this trickle-down theory, creates additional job opportunities, we still have to contend with the subject matter today, and that is affirmative action and discrimination. Second, the lag time between now and such a period would be so long that we would have to fill our penitentiaries or our welfare rolls and every other mechanism available because of the fact that the employment opportunities for blacks and minorities would have diminished.

So I cannot appreciate the recommendations, alternatives or options suggested by the Reagan administration in that regard.

Mr. HAWKINS. Can you explain what seems to be a lethargy or a failure on the part of individuals in such communities protesting budget cuts? I don't know about Mr. Washington, but I receive very few letters of protest, despite what I personally know to be a rather bleak future in the employment field.

Have you any explanation for the lack of protest at the current time with respect to such policies that are so clearly dangerous in their impact?

Mr. COMPTON. Only to say, and then I will pass to my colleagues, that I do share your concern and disappointment in the lack of such evidence thus far. However, we have seen, and I think Congressman Washington can support me on this, that when Mr. Reagan was here a few weeks ago to speak, that on a very short preparatory basis, some 5,000 people showed up to protest the policies of that administration.

I would suppose that we will see further indication of what you are referring to on September 19, in Washington where the whole Nation ought to turn out in opposition to the economic policies of this administration, for the AFL-CIO Solidarity Day. But you are correct, I believe, as far as any demonstrative display of concern. I do believe that there is a strong undercurrent that one day we are going to see in full evidence.

Mr. HAWKINS. Are you indicating that because most of the cuts will not be effective until after October 1 that the actual harm has not yet been felt by individuals and, therefore, they are not responding as they will once they begin to feel the impact of what will take place when the new fiscal year, which begins on October 1? Is that part of the explanation?

Reverend MARTIN. That would have been part of my comment also, Congressman. People have not yet felt the impact of what is coming down the tunnel. I would not interpret at all the silence of the public as lethargy, because silence doesn't always indicate that it is golden but that some very ugly things can be stirring and brewing. In fact, the NAACP feels that if something is not done to hinder some of the adversity that is coming as a result of this administration's proposals, we will find ourselves in a worse situation than we were in the latter 1960's. This time it won't be just black folks throwing bricks. We are going to have a lot of folks—white, black, Latino and even some middle-class folks will be throwing bricks this time around.

Mr. HAWKINS. They won't be middle class.

Reverend MARTIN. They won't be middle class.

Mr. HAWKINS. I suppose I better yield to Mr. Washington at this point.

Mr. WASHINGTON. You are safe in the arms of the first Congressional District.

There are voices, unfortunately, gentlemen—not many, but there are voices—in the black community which do not agree with your strong support of affirmative action programs; strong voices, it is unfortunate. One of those voices is Mr. Thomas Sowell, well known economist, of hue, who has taken the position that affirmative action hasn't worked and he suggests that the whole program stigmatizes minorities, and he is speaking specifically, if not exclusively, of black people. He should be responded to. He has not been adequately responded to. His voice will be heard again and again and again because I have a feeling that he has the coffers of the Reaganites to dip into to get his voice heard.

What would be your response to Mr. Sowell? Mr. King?

Mr. KING. My response to Mr. Sowell is that I am glad you used the word hue rather than color. He has purported to write a book called "Ethnic America"——

Mr. WASHINGTON. A history.

Mr. KING [continuing]. And has refused to designate African-Americans by any other term but Negro. This would suggest to me that that man is an anachronism and, therefore, you cannot very well productively respond to anachronism. He is a person who claims that affirmative action has not worked, despite the statistics that I read earlier relative to affirmative action being the entry into the construction industry for many minorities. Affirmative action required 10 percent of the Public Works Act dollars of 1977 to go to minority contractors for example. Had not affirmative action worked in law schools, there would have been no *Bakke;* had it not worked in medical schools, there would have been no *DeFunas;* and had it not worked in Federal contracting, there would not have been any *Weber* cases reaching the Supreme Court.

So I would suggest very strongly to all people of good will to respond to Mr. Sowell by not buying that book that costs $15.

Reverend MARTIN. Of course, the NAACP and Mr. Sowell have a long history together. In a recent conversation with him, it was made very clear that he is at Stanford University as a result of NAACP activity, and that he is a benefactor of the struggle and the sweat, blood and tears of many folks who made it possible for blacks to enjoy the good that he enjoys at this time. For him to take the posture to side with an oppressive administration is to deny and to betray all that sweat, blood and tears that our ancestors have shared to move black folks forward in this country.

Mr. WASHINGTON. The NAACP convention in Denver, the Urban League convention in the District of Columbia, the PUSH convention here in Chicago, and I assume the SCLC convention which is now going on, have all heightened this problem and the need for pressing for affirmative action, so you gentlemen are on record and I would suggest, if I may respectfully, to the chairman that we take notice of the Urban League's excellent report entitled "The State of a Black American," for our record.

I have no further questions, Mr. Chairman.

Mr. HAWKINS. Thank you, and I thank the witnesses.

Our next witness will be Mr. Danny Solis, executive director of Pilsen Neighbors Community Council. Mr. Solis.

May I say, just indicating a note of fairness, that Professor Sowell of Stanford University has been invited to testify before the committee in the Los Angeles hearings. I have no indication yet whether he will accept. Certainly he will be given full opportunity to express his views for the record and obviously be cross-examined on them in the Los Angeles hearings. Some of you may be interested in his testimony if he accepts the invitation of the subcommittee.

Pardon me, Mr. Solis. You may proceed.

STATEMENT OF DANNY SOLIS, EXECUTIVE DIRECTOR, PILSEN NEIGHBORS COMMUNITY COUNCIL

Mr. SOLIS. I, like my predecessors, would like to thank the subcommittee for inviting Pilsen Neighbors to participate in this hearing.

My name is Daniel Solis, and I am executive director of the Pilsen Neighbors Community Council. PNCC is a constituency-based community organization operating for the last 20 years in Pilsen, the near southwest side community of Chicago. Most of its activity is done by volunteers from Pilsen. Its efforts to improve housing, education, employment, sanitation, and recreation are done by organizing efforts of the people most affected by the deterioration of such services and who want to improve the quality of life for themselves and their children.

Pilsen is a unique community in that it is primarily a Mexican-American barrio which continues to serve as a port of entry for Mexicans arriving in Chicago. These residents are impacted with the contemporary problems affecting the rest of the city population along with the added problems of educational and language barriers, higher unemployment, and old, dilapidated housing stock.

PNCC has in the past won significant concessions, in coalition with others, from A. & P., the fire department and the CTA, to name a few. In June 1980, Pilsen organized a coalition of employment agencies which included the 18th Street Development Corp., Spanish Coaliation for Jobs, National Council of La Raza, and Pilsen Neighbors, and won a commitment from the Jewel Food Stores that 50 percent of their personnel at their new bazaar that opened in January 1981 on Cermak Road would be hired from the community. Because of these significant endeavors, PNCC, along with the West-Town Concerned Citizens Coalition, negotiated with and advised the city on their new affirmative action program presented to the public at the beginning of 1981.

In our efforts to increase job oportunities for minorities, we have noted a recent change in public opinion away from affirmative action programs. This change in public sentiment arises not only because of the present economic situation, but also from misinformation about the goals of affirmative action and the continuing need to assure access of minorities and women to the trades, professional and other employment opportunities.

We have traditionally looked to the Federal Government to protect our civil rights. Hispanics, in particular, have been able to begin making economic and educational advances through the assistance and protection of Federal laws. We still, however, find ourselves, as a group, on the lower end of the economic scale. Our numbers in institutions of higher education remain woefully small. We, therefore, look with deep concern at proposals aimed at reducing the Government's commitment to correcting discrimination.

We oppose all efforts to weaken this Nation's responsibility to provide equal opportunities for minorities and women. We oppose any effort to erase the gains which we have made in recent years. We oppose a return to publicly accepted racism. Specifically, we oppose proposals to alter Executive Order 11246.

The proposals under consideration would cripple enforcement of the equal employment opportunity provisions of the Executive order. The present regulations cover contractors who hold contracts of over $10,000. The Reagan administration proposal would raise the dollar threshold to $50,000 or $100,000. This would eliminate as many as 60 percent of the contractors from coverage.

More importantly, it would eliminate the smaller contractors who represent industries and companies which have been among the most resistant to opening job opportunities to Hispanics.

This same criticism applies to the proposals to eliminate from coverage those contractors who exceed the dollar threshold through aggregation of all contracts awarded in a 12-month period. Again, the effect would be to reduce the number of contractors covered, irrespective of the effect on Hispanics, blacks, and women.

A similar decrease in coverage is being proposed in affirmative action reporting requirements. The administration's proposal would increase the threshold dollar amount and number of employees for coverage of supply and service contractors. Some civil rights organizations estimate that 10,000 companies would be eliminated from the requirement of submitting written affirmative action plans. Even those contractors who would be covered under the proposal could avoid annual review by instituting a training program which could qualify it for 5-year exemption from review.

The effect of these proposals would be devastating on affirmative action programs. Experience has taught us that we cannot rely on the good will of corporations and other institutions to provide equal access to jobs and training programs.

Discrimination against Hispanics has been well documented. The effects of the historic exclusion of Hispanics from this Nation's institutions can still be seen. We suffer a higher unemployment rate than the general public. Our average income is well below the national average. Our educational level is one of the lowest in the Nation.

We have established a need for remedies to correct these effects of past discrimination. Affirmative action programs are designed to provide access to Hispanics to employment and training opportunities. Affirmative action does not require the hiring of unqualified persons. Affirmative action is not a rigid system of quotas. It is instead a method of assuring participation of qualified and qualifiable minorities in industries, corporations, and other institutions which had previously been closed to us. The extent and content of the program is determined by the needs of the particular institution and the underutilization of minorities and women by that institution.

In conclusion, the most important weapon that Pilsen Neighbors Community Council and other community organizations such as ours have in exposing and confronting discriminatory practices by private corporations and public agencies is the affirmative action requirements of Executive Order 11246. By changing this Executive order and therefore diluting it, the effectiveness of our organization would be weakened and again put our community at a distinct disadvantage in fighting for true equal employment and educational opportunity.

Mr. HAWKINS. Thank you, Mr. Solis.

It is anticipated that under some of the programs being advocated by the administration, particularly the expenditure of such a large amount, the greatest amount in the history of this country for weapons and weapons systems, that there will be many jobs that may become available, perhaps of a highly technical nature.

Is it reasonable, in your opinion, to anticipate that many Latinos will be employed in the skills that will be provided by this great acceleration in defense expenditures?

Mr. SOLIS. No, not at all, Mr. Hawkins. I think if we look at the statistics we can see that many Latinos do not have the educational advantages in terms of not only the regular school system but in the trades and the unions that many other groups have. And for us to expect to have jobs in these highly technical areas would be ridiculous.

We have a similar point of view expressed by the mayor of Chicago, in which she says that some of the development that will be going on in the city of Chicago, like the North Loop area, would open up jobs for Latinos, and we have expressed to her that this would not be the case unless there is an appropriate amount of training to be done and an entry level of positions in the trade unions for Latinos. That's just not realistic right now.

Mr. HAWKINS. Will the cutbacks in the training programs, such as we are now experiencing under the budget cuts including but not limited to CETA, have an adverse impact on Latinos in qualifying for the skills that may be developed through some of these new proposals?

Mr. SOLIS. That is without a doubt. I think right now some of the organizations that I mentioned we worked in coalition with have training programs. Their future in October looks very bleak in terms of funding. It just doesn't make sense that on one hand they say you are going to have these opportunities in private industry, which are highly technical, and on the other hand cutting off the very credible programs that are now providing training and are just beginning to make a dent, so that our people can enter these professions.

Mr. HAWKINS. Do you think these private companies will undertake training programs in order to qualify those from the Latino community?

Mr. SOLIS. I don't think so. I think if you look at the history of these corporations and these businesses, if they don't have somebody from the Federal Government pushing them and requiring them to do so, they are not going to take the incentive to doing it.

Mr. HAWKINS. The statement has been made recently to the effect that you—meaning, of course, minorities in general—are not doing too well in the present programs and then why not try something new. What would be your response to such advice?

Mr. SOLIS. I think when they say we are not doing too well under the present program, they have failed to consider the actual participants of the different training programs that have been in existence for the past few years. I think if we took a poll in our community and talked to the people that will be losing either their jobs or their training programs between now and the end of the year, they will tell you that they learned a lot and that they need to be able to finish these programs. If you talk to the people who have finished these programs in the past year or past 5 years, most of them are in good positions in some of the public utility companies such as Illinois Bell, CTA, Commonwealth Ed, Peoples Gas. Many of these corporations have hired Hispanics, blacks, and women who had been trained in programs such as CETA and who had gotten their start there.

Mr. HAWKINS. Do you believe there is any connection between unemployment and juvenile delinquency and crime?

Mr. SOLIS. Definitely. I think next summer is going to be a very testy season for many young blacks and Hispanics who are going to be without jobs or without training programs because of the Reagan proposals.

Mr. HAWKINS. What will these young people be doing?

Mr. SOLIS. I think they will go back to gang activity, to burglarizing, to drugs, to many of the things that were happening before in the middle and late 1960's.

Mr. HAWKINS. Do you believe that well-structured employment programs and the strengthening of the Civil Rights Act so as to reduce discrimination will discourage this type of criminal aggression?

Mr. SOLIS. Yes, I do, sir.

Mr. HAWKINS. Thank you.

Mr. Washington.

Mr. WASHINGTON. Thank you, Mr. Chairman.

Mr. Solis, as a member of another subcommittee and another committee, I have just completed a series of about 20 hearings on the extension of the Voting Rights Act of 1965, as amended, and that extension is progressing now, I hope, favorably. But the point I am trying to make is that in the process of those hearings it is quite clear that blacks and Hispanics, especially the bilingual section of the Voting Rights Act, continue to be harassed and continue to be prevented from voting to a great extent, and also do not have their vote count as such. The votes are diluted.

What concerns me, however, are the growing attempts on the part of many people, certainly in Chicago, to divert these two groups from their common goal and to drive a wedge between them and to get each fighting against the other for the few dregs that the trickle-down theory—that is, supply side economics—will drop to us. I am very much concerned about this.

What is your response to that, sir?

Mr. SOLIS. I agree that in appearances it has seemed—specifically here in Chicago—that some of the powers that be right now are trying to divide up the different minority groups such as the blacks and Hispanics. I don't think that they have been successful. I think that appearances might indicate that there has been a move toward that, and I think Hispancis and blacks have to get together.

Just like the "new right" in the last few years, I think blacks and Hispanics have to talk seriously about voter registration programs for our people. I think doing this together is a very important factor.

I have been a participant and I know of a number of groups that have gotten together with different minority groups to sit down and talk about such a coalition. I think continuing that situation would only be a positive situation for both the black and Hispanic communities.

Mr. WASHINGTON. Some critics of affirmative action—I mean strong critics—have taken the position that affirmative action proposals should not be pressed as hard for Hispanics as for Blacks. Do you want to comment on that?

Mr. SOLIS. I think that is something that I wouldn't want to comment on. [Laughter.]

Mr. WASHINGTON. But you can understand the purpose behind it, can't you?

Mr. SOLIS. Yes; I think that is a good example of what you pointed out earlier, in terms of efforts to divide up the minority groups.

Mr. WASHINGTON. Thank you, Mr. Chairman.

Mr. HAWKINS. Thank you again, Mr. Solis, for your very excellent testimony.

Mr. SOLIS. Thank you, sir.

Mr. HAWKINS. Will the next witnesses on the women's panel please come to the witness table.

Ms. Teyonda Wertz, deputy director, employment and training, Chicago Community Economic Development Corp.; Ms. Day Piercy, chair, and Ms. Nancy Kreiter, research director, Women Employed, Inc.; and Ms. Betty Willhoite of the Chicago Chapter of the League of Women Voters.

Mr. HAWKINS. Miss Wertz, suppose we hear from you first. I think we have a written statement from you, don't we?

Ms. WERTZ. Yes, you do.

Mr. HAWKINS. The statement in its entirety will be entered in the record and you may summarize and give us the highlights and deal with it as best you can.

STATEMENT OF TEYONDA WERTZ, DEPUTY DIRECTOR, EMPLOYMENT AND TRAINING, COMMUNITY ECONOMIC DEVELOPMENT ASSOCIATION OF COOK COUNTY

Ms. WERTZ. Good morning, Congressman Hawkins, Congressman Washington, and members of the Subcommittee on Employment Opportunities. My name is Teyonda Wertz. I am deputy director of employment and training for the Community Economic Development Association of Cook County. For 5 years I was women's affairs coordinator for the Chicago Urban League's Project LEAP—labor education advancement program.

I am presenting these remarks on behalf of the Illinois Coalition on Women's Employment, a network of over 300 community organizations, social service agencies, educational institutions, and individuals concerned with improving the employment status of women in Illinois.

Because of the limited time allotted in this hearing, I will make only general comments on the proposed cutbacks in the affirmative action requirements on Executive Order 11246. The coalition will be submitting more extensive written comments following this hearing.

Our views on the proposed amendments to Executive Order 11246 are based on three premises which we know to be true:

First, women desperately need and want employment in order to raise themselves and their families out of poverty; second, sex discrimination in employment by Federal contractors continues to hold women back in their attempts to obtain decent employment in the trades; and third, women need continued, if not expanded, enforcement of federal laws mandating affirmative action if they are to achieve equality of economic opportunity. As bad as the wage differential between men and women is today, it would be even worse if not for the existence and enforcement of Executive Order 11246.

As to our first premise, women have become the poorest segment of our society over the past decade, giving meaning to the current phrase "The feminization of poverty." For example, two out of three poor persons in this country are women; while women head 15 percent of all households, they head half of all households below the poverty level; the median income of female-headed families in 1977 was $340 above the poverty level; among black and Hispanic female-headed families, the median income was about $1,000 below it.

Obviously, wage differentials play a large role in keeping women in poverty.

Look at the data. Women continue to earn 59 percent of what men earn; for women who head families, the situation is worse; they earn 33 percent of what their male counterparts earn. Studies show that women who head families would receive 36 percent more income if they were men, other things—like education and experience—being equal.

The wage differential between men and women is greatest among the young, and it is worse for black women. Exclusion of women from certain occupations is the most significant determinant of the wage differential between men and women and has prevented any real improvement in women's earnings relative to men's.

Occupational exclusion is nowhere more prevalent than in occupations that are commonly subject to OFCCP requirements. For example, women constitute 42 percent of the labor force in Illinois, but only 2.9 percent of the construction workers employed by Federal construction contractors in Illinois, though Federal goals and timetables target a participation rate of 6.9 percent.

In particular, one-half of 1 percent of brick and stone masons are women; 1.3 percent of electricians are women; 4 percent of plumbers and pipefitters are women; women make up 3.6 percent of union apprentices currently enrolled in Chicago's premier Washburne Trade School and 4 percent of all registered apprentices in Illinois. Minority women constitute eight-tenths of 1 percent of registered apprentices in Illinois.

From our perspective, then, exclusion of women from high-paying trades holds many women and their families in poverty.

As to our second premise, women do not congregate in low-paid positions and shun high-paid positions by inclination. I have worked for a number of years with women who are ready, willing and able to work in the trades but who have constantly run up against a wall of discrimination in trying to obtain or retain employment. A few examples of both union and employer attitudes should suffice to show you that, without the prod of Federal affirmative action requirements, the prospect of women's employment in nontraditional occupations will remain dim.

We know of Federal contractors who hire women when compliance investigators make onsite inspections, and fire them when the investigators leave and fail to follow up with additional compliance reviews.

A woman who has been on the architectural ironworkers' waiting list since 1979 periodically gets calls from the union asking her if she is still interested in becoming an iron worker. When she responds that she is, she is told there are no openings. The union has stated that it must have a contractor that will allow her to work on its site, and until that time there is no work available.

After a group of women with bachelors and masters degrees applied for work at a unionized elevator company, the company stated that from its past experience it now prefers women who have attended technical training schools that prepared them in electrical wiring with some knowledge of Ohm's law. These requirements do not pertain to men.

Companies that agreed to employ women specifically to work above ground on the deep tunnel project seem to get a kick out of plunging those women into a workplace 600 feet below the ground on their first day of work, without warning, without preparation, and without an opportunity to acclimate themselves to the extreme environmental change.

Through February 1981, several Federal contractors working on the deep tunnel project in Chicago have not employed a single woman, though their work force consists of between 100 and 300 men each.

These few examples are typical and they confirm what everyone working in this area well knows: Federal contractors will not voluntarily give women equal employment opportunity without strong Federal initiatives. There remains a real need for Federal mandates in this area.

As to our third premise, despite the dismal record of Federal contractors under Executive Order 11246, I am certain that without it the situation would be even worse. For the number of women employed in the trades, small as it is, represents a significant increase since the promulgation of the order, and one that would not have happened without it. The percent of women carpenters, painters, construction workers, and telephone line workers has more than doubled since 1975, for example.

In 1975, when we made affirmative action presentations to companies, urging them to hire women, we were greeted with either silence or the suggestion that we go home and bake cookies. Some of these same companies are now beginning to call us for women to fill positions because, as they state frankly, they need a 6.9 percent ratio of women in order to obtain Federal contracts.

In 1979, women constituted 1.9 percent of all registered apprentices in Illinois. Today that figure is 4 percent—not a great statistic, but an improvement nevertheless, and one which indicates that now is certainly not the time to cut back on affirmative action requirements.

We have found time and again that the only effective prod to convincing Federal contractors to employ and promote women is the existence of Executive Order 11246.

For these reasons, we oppose any relaxation or abbreviation of the affirmative action requirements to which Federal contractors, including construction contractors, are subject under Executive Order 11246, as amended by the proposals of December 30, 1980.

We oppose any change in the sex discrimination provisions contained in the proposed amendments of December 30, 1980, particularly any weakening of Federal contractors' responsibility for sexual harassment in the workplace. We have found sexual harassment to be an especially prevalent and discouraging problem in the trades.

We especially oppose any suggestion of abandoning backpay and other retrospective relief. Without such sanctions, contractors have no incentive whatsoever to comply with affirmative action requirements before they are caught.

We oppose the 5-year exemption of contractors that have established linkage programs. Such linkages are no guarantee of compliance with Federal mandates. In Illinois, for example, women constitute 62 percent of eligible enrollees under the private sector initiative section of the CETA program, but with only 46.7 percent of the actual enrollees in that program.

The proposed changes in Executive Order 11246 all constitute a cutback in affirmative action requirements. There are no additions or substitutions. For example, no tax incentives—a favor concept of the current administration—to encourage compliance. It is thus difficult to believe that this administration is truly concerned about equal employment opportunity. For Federal contractors have not made a showing that there is need for less vigorous enforcement of equal opportunity mandates than there was when Executive Order 11246 was first promulgated. To the contrary, a look at their employment statistics emphasizes the need to retain and enforce the mandates of the order.

In fact, we would like to see the order tightened, expanded and enforced across the board, not cut back. For we believe that our Government ought not to do business with companies that fail or refuse to live up to affirmative action goals—goals which have been designed to provide equal opportunity to those citizens to whom it has been denied in the past.

[The prepared testimony of Teyonda Wertz follows:]

Prepared Testimony of Teyonda Wertz on Behalf of the Illinois Coalition on Women's Employment

My name is Teyonda Wertz, I am deputy director of employment and training for the Community Economic Development Association of Cook County. For five years I was Women's Affairs Coordinator for the Chicago Urban League's Project LEAP (Labor Education Advancement Program).

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Second, sex discrimination in employment by federal contractors continues to hold women back in their attempts to obtain decent employment in the trades.

Third, women need continued, if not expanded, enforcement of federal laws mandating affirmative action if they are to achieve equality of economic opportunity. As bad as the wage differential between men and women is today, it would be even worse if not for the existence and enforcement of Executive Order 11246.

As to our first premise:

Women have become the poorest segment of our society over the past decade, giving meaning to the current phrase, "The feminization of poverty." For example:

Two out of 3 poor persons in this country are women;

While women head 15 percent of all households, they head half of all households below the poverty level;

The median income of female-headed families in 1977 was $340 above the poverty level; among Black and hispanic female-headed families, the median income was about $1,000 below it.

Obviously, wage differentials play a large role in keeping women in poverty. Look at the data:

Women continue to earn 59 percent of what men earn;

For women who head families, the situation is worse; they earn 33 percent of what their male counterparts earn;

Studies show that women who head families would receive 36 percent more income if they were men, other things—like education and experience—being equal.

The wage differential between men and women is greatest among the young; and it is worse for black women. Exclusion of women from certain occupations is the most significant determinant of the wage differential between men and women and has prevented any real improvement in women's earnings relative to men's.

Occupational exclusion is nowhere more prevalent than in occupations that are commonly subject to OFCCP requirements. For example, women constitute 42 percent of the labor force in Illinois, but only 2.9 percent of the construction workers employed by federal construction contractors in Illinois—though federal goals and timetables target a participation rate of 6.9 percent. In particular:

Only one-half of 1 percent of brick and stone masons are women;

1.3 percent of electricians are women;

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From our perspective, then, exclusion of women from high-paying trades holds many women and their families in poverty.

As to our second premise:

Women do not congregate in low-paid positions and shun high-paid positions by inclination. I have worked for a number of years with women who are ready, willing and able to work in the trades but who have constantly run up against a wall of discrimination in trying to obtain or retain employment. A few examples of both union and employer attitudes should suffice to show you that, without the prod of Federal affirmative action requirements, the prospect of women's employment in nontraditional occupations will remain dim:

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Women employed on construction sites are routinely sent to the tops of buildings under construction on their first day of work to look for a wrench or similar items.

Women's bathroom facilities have frequently been located 2 and 3 miles away from the work site.

Through February of 1981, several Federal contractors working on the deep tunnel project in Chicago have not employed a single woman, though their work forces consist of between one hundred and three hundred men each.

These few examples are typical and they confirm what everyone working in this area well knows; Federal contractors will not voluntarily give women equal employment opportunity without strong Federal initiatives.

There remains a real need for Federal mandates in this area.

As to our third premise:

Despite the dismal record of Federal contractors under Executive order 11246, I am certain that without it, the situation would be even worse. For the number of women employed in the trades, small as it is, represents a significant increase since the promulgation of the order, and one that would not have happened without it. The percent of women carpenters, painters, construction workers, and telephone line workers has more than doubled since 1975, for example.

In 1975, when we made affirmative action presentations to companies, urging them to hire women, we were greeted with either silence or the suggestion that we go home and bake cookies. Some of these same companies are now beginning to call us for women to fill positions because, as they state frankly, they need a 6.9 percent ratio of women in order to obtain Federal contracts.

In 1979, women constituted 1.9 percent of all registered apprentices in Illinois. Today that figure is 4 percent—not a great statistic, but an improvement nevertheless, and one which indicates that now is certainly not the time to cut back on affirmative action requirements.

We have found time and again that the only effective prod to convincing Federal contractors to employ and promote women is the existence of Executive Order 11246.

For these reasons, we oppose any relaxation or abbreviation of the affirmative action requirements to which Federal contractors—including construction contractors—are subject under Executive Order 11246, as amended by the proposals of December 30, 1980.

We oppose any change in the sex discrimination provisions contained in the proposed amendments of December 30, 1980, particularly any weakening of Federal contractors' responsibility for sexual harassment in the workplace. We have found sexual harassment to be an especialy prevalent and discouraging problem in the trades.

We especially oppose any suggestion of abandoning back-pay and other retrospective relief; without such sanctions, contractors have no incentive whatsoever to comply with affirmative action requirements before they are "caught."

We oppose the five-year "exemption" of contractors that have established linkage programs. Such linkages are no guarantee of compliance with Federal mandates. In Illinois, for example, women constitute 62 percent of eligible enrollees under the private sector initiative section of the CETA program but only 46.7 percent of the actual enrollees in that program.

The proposed changes in Executive Order 11246 all constitute a cutback in affirmative action requirements. There are no additions or substitutions—for example, no tax incentives (a favorite concept of the current administration) to encourage compliance. It is, thus, difficult to believe that this Administration is truly concerned about equal employment opportunity. For Federal contractors have not made a showing that there is need for less vigorous enforcement of equal opportunity mandates than there was when Executive Order 11246 was first promulgated. To the contrary, a look at their employment statistics emphasizes the need to retain and enforce the mandates of the order.

In fact, we would like to see the order tightened, expanded, and enforced across the board, *not* cut back. For we believe that our Government ought not to do business with companies that fail or refuse to live up to affirmative action goals—goals which have been designed to provide equal opportunity to those citizens to whom it has been denied in the past.

Appendix

REPRESENATIVE ORGANIZATIONS OF THE ILLINOIS COALITION ON WOMEN'S EMPLOYMENT

American Indian Brotherhood.
Chicago Lawyers Committee for Civil Rights Under Law.
Chicago Women Carpenters.
Chinese-American Service League.
Community Economic Development Association of Cook County.
Eighteenth Street Development Corporation.
Filipino-American Voters League of Illinois.
Loop Center YWCA.
Midwest Women's Center.
Minority Information Referral Center.
Mujeres Latinas en Acción.
National Organization of Women, Metro-East Chapter.
Southern Christian Leadership Conference, Chicago Metro Chapter.
Southwest Women Working Together.

Mr. Hawkins. Thank you, Miss Wertz.

The next witnesses are Miss Day Piercy and Miss Nancy Kreiter, both representing Women Employed, Inc.

Ms. Piercy. I am Day Piercy and I am going to present the testimony. Miss Kreiter is also here to respond to any specific technical questions you may have.

Mr. Hawkins. We are delighted to have both of you, and we wish to take this opportunity to express the appreciation of the subcommittee for the wonderful cooperation we have received from the organization which you represent. We are looking forward to your testimony.

STATEMENT OF DAY PIERCY, ON BEHALF OF WOMEN EMPLOYED, ACCOMPANIED BY NANCY KREITER, RESEARCH DIRECTOR

Ms. Piercy. Thank you, Mr. Hawkins.

Congressman Hawkins, Congressman Washington, we appreciate the opportunity to appear before you today to talk about a subject of grave concern to all of us.

Women Employed is a national organization of working women. For the past 8 years we have been actively involved in programs to improve enforcement of equal opportunity laws. Our experiences in helping thousands of working women who have been the victims of discrimination have demonstrated the need for Federal efforts to enforce equal opportunity laws.

The decade of the 1970's can best be characterized as the decade of access, when enforcement of equal opportunity laws resulted in the opening of previously closed occupations to women. However, despite these breakthroughs, women have made little progress toward economic equality. Women currently earn only 59 cents for every dollar men make. This wage gap is not being narrowed because discrimination is deeply embedded not only in individual attitudes and practices but also in corporate policies.

Specifically, women continue to be denied access to higher paying jobs. They continue to be denied equal pay for equal work. And jobs traditionally held by women continue to rate lower salaries regardless of the skills required. These patterns of discrimination demonstrate the need for strong and consistent enforcement of

Executive Order 11246 if the barriers to equal employment opportunity for women are to be removed.

Because enforcement of the Executive order has resulted in sanctions, including back pay awards and debarments, employers have begun to complain loudly and angrily that the affirmative action requirements spelled out in the regulations are burdensome and counterproductive. However, history has shown, and the experience of women and minorities confirms unequivocally, that nothing less than concrete programs with goals and timetables can overcome years of discrimination and exclusion.

Prior to establishment of the present Federal contract compliance program with Executive Order 11246 in 1964, a number of Executive orders going back as far as 1941 were issued to encourage Federal contractors to hire more minorities through voluntary plans for progress. But after a number of years of such plans for progress, it became clear that voluntary compliance without sanctions for noncompliance was a total failure. Virtually no real change had been made in hiring practices of Federal contractors. This failure provided the backdrop for a natural evolution to the present system in which sanctions are available for those contractors that fail, after repeated efforts at conciliation, to take steps to comply with their contractual obligations to provide equal opportunity.

In fact, in fiscal year 1980, over 4,000 persons were awarded nearly $9.3 million in back pay through increased conciliation agreements and use of sanctions. This is more than the total back pay awarded in the 2 years preceding consolidation of the program which was accomplished in 1978. Since 1965, 27 Federal contractors have been debarred from doing business with the Government. Over half of those debarments occurred in the past 3 years.

Of particular importance is the investigation of affected classes of women and minorities who suffer from the effects of past discriminatory treatment. Essentially, affected class analysis is the key to attacking systemic discrimination by Federal contractors. In fiscal year 1980, 391 affected class cases were being handled, almost all of which were initiated after consolidation. It is clear to us that we began fiscal year 1981 with an OFCCP enforcement apparatus finally capable of impacting on the discrimination and giving meaning to the Executive ord

Indeed, the Executive order program is premised on the Government's constitutional obligation to insure that Federal moneys are not used to discriminate. Any effective enforcement of this obligation cannot rely on voluntarism only. There must be measurable standards to evaluate the good faith of contractors' efforts, and meaningful sanctions for noncompliance.

Further, an effective enforcement framework is necessary regardless of the resource levels allocated, so that all contractors will have an incentive to comply voluntarily. While the OFCCP is not able to review the compliance of all contractors and subcontractors, those that cannot be reviewed should not be freed of their contractual obligations. No one would suggest that crimes should only be illegal for those who are caught.

Another element necessary to effective Executive order enforcement is the authority of the Department of Labor to require compliance. The threat of debarment and the requirement that contractors remedy discrimination before being deemed to be in compliance have proven to be by far the most effective means at the OFCCP's disposal to achieve the goals of the program. Neither of these tools should be removed if the Executive order is to continue to have a meaningful effect on contractors' employment policies.

A final factor that must be incorporated into the OFCCP enforcement program is compliance with the Department's court-imposed obligations. A number of challenges to past lax or nonexistent OFCCP enforcement have been sustained or settled; the resulting court orders binding the OFCCP cannot be ignored.

The proposed new regulations currently under consideration by the Department of Labor are a systematic effort to eliminate all of these critical elements in the enforcement apparatus. These are not proposals to eliminate so called paperwork burdens, to streamline regulations, or to prevent abuse of agency discretion. These are proposals designed to eliminate equal opportunity requirements. The rights of victims of discrimination are being trampled upon in a stampede to deregulate America's businesses. The effect will be to slam the door on opportunity at the very moment in history when women and minorities at long last have pried it open.

To preserve the basic principle of equal opportunity for all citizens, Executive Order 11246 must be retained. Goals and timetables in affirmative action plans to measure compliance must be retained. Current coverage of contractors must be retained. Continued authorization of the debarment sanctions, back pay, and other retrospective relief requirements must be retained. Compliance with outstanding court orders governing OFCCP's enforcement efforts must be carried out.

Since 1978 Women Employed has been involved in a major, precedent-setting case which demonstrates the necessity for these requirements. In January 1981, Administrative Law Judge Rhea M. Burrow recommended that Harris Trust & Savings Bank, Chicago's third largest bank, pay $12.2 million to 1,800 women and minority employees who are the victims of discriminatory hiring, pay, and promotion practices. The case dates back to 1974 when Women Employed first filed a complaint with the U.S. Treasury Department, charging that Harris Bank's employment practices violated Executive Order 11246. This case has been watched closely because it is the first time in which the Federal Government has sought to withdraw deposits from a bank because of discrimination, and the first time the Government has sought back wages for an affected class of bank employees through administrative sanctions.

Harris Bank has appealed to Secretary of Labor Raymond Donovan in an attempt to overturn the administrative law judge's decision. In addition, the American Bankers Association has filed an amicus brief asking the Secretary of Labor to delay a decision in the case until the current discussions about regulations under Executive Order 11246 have been completed. The *Harris Bank* case graphically demonstrates the serious economic effects of discrimination and the need for Government efforts to insure equal opportunity for all in the job market. Without enforcement of Government regulations requiring equal opportunity in hiring, training, and promotions, women and minorities will continue to suffer discrimination.

Today, 8.5 million women work to maintain their families. Among these are 2 million women whose husbands are absent, 2.3 million women who are widowed, and 4 million women who are divorced. In addition, 11 million single American women are working to maintain themselves. Almost 13 million married women with children are working. Forty percent of black households are female-headed, dependent solely or primarily on the woman's livelihood.

All of these women's earnings are crucial to the well-being and economic stability of their families. These women need and are entitled to equal opportunity. Women have the right to expect that employers who do business with the Federal Government will be required to provide equal opportunity for all employees. Unfortunately, the reality is that many employers will not practice equal opportunity voluntarily. The continuing pervasiveness of discrimination is a sad testament to that fact. This Nation's commitment to economic equality is given meaning by Executive Order 11246, and the enforcement apparatus of the OFCCP. The continued existence of those regulations combined with vigorous enforcement efforts are critically needed now to maintain that commitment.

Mr. Chairman, thank you very much for this opportunity to testify.

I would like to submit for the record three additional documents. First is a more detail position paper on the proposed regulations; second, a paper entitled "Combatting Sex Discrimination: The Need for Contract Compliance Requirements"; and third, our 1980 report assessing the progress in enforcement of both the OFCCP and the EEOC.

Mr. HAWKINS. Without objection, those three documents will be included in the record along with the testimony of the witness.

[The material submitted by Day Piercy follows:]

POSITION PAPER ON POSSIBLE CHANGES TO THE AFFIRMATIVE ACTION REGULATIONS FOR GOVERNMENT CONTRACTORS

Submitted by Women Employed and the Women's Legal Defense Fund on behalf of:

ACLU Women's Right Project. American Coalition of Citizens With Disabilities.
Coal Employment Project.
Coalition of Labor Union Women.
East Tennessee Coalmining Women's Support Team.
Employment Law Center, San Francisco Legal Aid Society.
Equal Rights Advocates, Inc.
Federation of Organizations for Professional Women.
League of Women Voters of the United States.
Legal Aid Society of Alameda County.
Mexican American Legal Defense and Educational Fund.
National Bar Association.
National Conference of Puerto Rican Women, Inc.
National Congress of Neighborhood Women.
National Employment Law Project.
National Federation of Business and Professional Women's Clubs, Inc.
National Women's Political Caucus.
Non-traditional Job Opportunities.
Puerto Rican Legal Defense and Education Fund, Inc.
Women for Racial and Economic Equality.
Women in Blue Collar Jobs.
Women's Equity Action League.

Working Women's Institute

INTRODUCTION

In early May, 1981, Secretary of Labor Raymond Donovan and Solicitor of Labor Tim Ryan met with representatives of constituency groups (representing diverse civil rights interests, including blacks, Hispanics, women, disabled people, veterans, and other minorities), as well as with representatives of business and trade unions, to set out the contours of revisions the Department of Labor contemplates to the regulations governing enforcement by the Office of Federal Contract Compliance Programs ("OFCCP") of Executive Order 11246, as amended.[1] This Position Paper reflects the views of its signatories about the plans, or "tenative decisions," as they were revealed at a meeting on May 12, 1981.[2]

Each of the groups that signs on to this Paper represents the concerns of a constituency that the contract compliance program is designed to serve. These organizations share a common belief that a federal contract compliance program that requires that contractors commit to nondiscrimination and affirmative action as a condition of doing business with the Government is an essential tool in the national effort to provide true equal employment opportunity for members of groups to whom it has been denied in the past because of their race, national origin, religion, or sex. Indeed, the Executive Order program is premised on the Government's constitutional obligation to ensure that federal monies are not used to discriminate. Thus, we are united in opposing any weakening in the enforcement of this obligation.

Any effective enforcement of this obligation cannot rely on voluntarism only; there must be measurable standards to evaluate the "good faith" of contractors' efforts, and meaningful sanctions for non-compliance. Further, an effective enforcement framework is necessary regardless of the resource levels allocated, so that all contractors will have an incentive to comply voluntarily. While the OFCCP is not able to review the compliance of all contractors and subcontractors, those that cannot be reviewed should not be freed of their contractual obligations. No one would suggest that crimes should only be illegal for those who are caught.

A third element necessary to effective Executive Order enforcement is the authority of the Department of Labor to require compliance. The threat of debarment and the requirement that contractors remedy existing discrimination before being deemed to be in compliance have proven to be by far the two most effective means at the Department's disposal to achieve the goals of the program. Neither of these tools should be removed if the Executive Order is to continue to have a meaningful effect on contractors' employment policies.

A final factor that must be incorporated into the OFCCP enforcement program is compliance with the Department's court-imposed obligations. A number of challenges to past lax or non-existent OFCCP enforcement have been sustained or settled;[3] the resulting court orders binding the OFCCP cannot be ignored.

Thus, we all agree that the following elements are crucial to an effective enforcement program: retention of Executive Order 11246, as amended; retention of goals and timetables in affirmative action plans to measure compliance; no decreased coverage of contractors; continued authorization of the debarment sanction and of back-pay and other retrospective relief requirements; compliance with outstanding court orders governing OFCCP's enforcement efforts.

In addition, we believe that such "buzz" words and phrases as "paperwork burdens," "over-regulation," and "abuse of discretion," though they may be valid in some contexts, are being used in bad faith, to cloak opposition to equal employment opportunity for women and minorities. Revisions to make compliance easier for contractors are one thing; but the bottom line is that in the process, meaningful enforcement for the victims of discrimination must not be overlooked.

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[1] These regulations are presently codified at 41 C.F.R. Part 60. Proposed changes to these regulations were previously published, 44 F.R. 77006 (Dec. 28, 1979) and 45 F.R. 11856 (Feb. 22, 1980), and finalized, 45 F.R. 86206 (Dec. 30, 1980), with an effective date of January 29, 1981; however, on January 28, 1981, the effective date was stayed (46 F.R. 9084, republished Jan. 30, 1981, 46 F.R. 9950) pending further review of the regulations by the Reagan administration. We understand that the Department of Labor's present efforts are part of that review.

[2] Several reports of the Department's plans have been reported in the press. See, e.g., Legal Times (May 4, 1981); Wall Street Journal (May 13, 1981); Washington Post (May 16, 1981). To the extent that these reports provided further or differing information about the Department of Labor's plans, we also attempt to respond to that information in this paper.

[3] For example, *Women's Equity Action League ("WEAL")* v. *Califano*, (D.D.C.); *Legal Aid Society of Alameda County ("LASAC")* v. *Brennan*, 21 FEP Cases 605 (9th Cir. 1979); *Advocates for Women* v. *Marshall*, Civ. Action No. 76-0862 (D.D.C.); *Women Working in Construction* v. *Marshall*, Civ. Action No. 76-527 (D.D.C.).

Before turning to the specific regulatory changes under consideration, we would like to comment about the process being employed to revise them. First, we are concerned at the haste with which the revisions are being undertaken and, while we appreciate the present opportunity to make our position known, at the general lack of input from affected groups. The regulations issued in final form in December, 1980, were not "midnight" regulations, but rather were the product of an extensive process. Four years ago, after years of criticism from client groups, contractors, and Congressional committees, OFCCP pledged to undertake regulatory reform in order to standardize, streamline, and strengthen the Executive Order program. The December, 1979, proposal came after an extended process of consultation with representatives of protected classes, federal agencies with EEO responsibility, and contractors. When finalized, the regulations reflected the process the OFCCP undertook to develop them. The extensive consultation process served a vital role in refining the proposals, ensuring that the perspective of those affected most was included, and in a few areas, in developing a consensus for certain changes. Now, however, the process of review and revision appears to have gone underground. Consultation has been limited, at least for civil rights and women's groups, to a single meeting. No written draft of proposed changes has been provided. Thus the OMB review process will be set in motion, and options will be hardened into final proposals, without providing the constituency groups an opportunity to respond in any meaningful way. It is extremely troubling that the present regulatory reform initative does not involve a more open process.

Second, the fact that the Reagan administration took special action to delay final promulgation of these regulations can only be interpreted as a retrenchment in civil rights policy. Indeed, the whole thrust of this review has been to alleviate the complaints of contractors. Victims of discrimination are being largely ignored. We fear that the contractors' complaints are a result of the fact that the Executive Order program that the Reagan administration has inherited has finally put strong enforcement mechanisms in place. Changes to the program are now being rushed through in response to such complaints. Yet we do not believe that such complaints are all due to duplicative, inconsistent, or burdensome requirements, as those who are most vocal in the attack claim, but rather to the program's newly-achieved potential for effectiveness.

Third, it is inexplicable and unacceptable that the Department of Labor would undertake such a major regulatory review and decision-making process prior to the appointment of a Director for the OFCCP. Such a step reflects the lack of careful deliberation that is essential to good rule-making.

Finally, we object to the process used here by which we are forced to comment on "tentative decisions" without being provided with specific language. For the Department to have requested our input without giving us the means to make that input meaningful is, to say the least, disingenuous. Since they were prepared without seeing draft regulations, we reserve the right to change or expand upon our response.

We now respond more specifically to aspects of the changes that we understand the Department to be contemplating.

THRESHOLDS FOR COVERAGE FOR NONCONSTRUCTION CONTRACTORS

A. *Increase in cut-off threshold for contractors required to prepare written affirmative action plans.*

The Department of Labor plans to raise the threshold levels (in number of employees and dollar amount) above which contractors are required to prepare and implement written affirmative action plans ("AAP's"). The present regulations impose this requirement on contractors who have 50 or more employees and a contract of $50,000 or more, 41 C.F.R. 60-1.40; the Department is considering raising the levels to 100-250 employees and $250,00-$1,000,000 in contracts. According to the Department's own initial estimates, fixing the thresholds at 100 employees and $1 million would reduce the number of companies subject to the AAP requirement from 17,000 to 4,200.[4]

We oppose any reduction in the universe of contractors subject to the AAP requirement. This requirement provides perhaps the most important tool for ensuring equal employment opportunity in the entire arsenal of enforcement mechanisms. Only when employers undertake self-analysis of their workforces and develop steps to correct underutilization will significant progress be made toward full-scale integration of women and minorities into the jobs from which they have been historically barred.[5] The purpose of the federal contract compliance program is to achieve that progress by requiring such self-analysis and affirmative planning of all companies that have any significant contracts with the federal government. The right of the Government to impose this requirement as a condition of doing business with it has been upheld by virtually every court that has been faced with the issue.[6] Indeed, this right is premised not only upon statutory and executive authority but also upon the Government's constitutional obligation—"since public funds may not constitutionally be used to subsidize employment discrimination." [7] There is therefore no justification for exempting the vast majority—75 percent—of federal contractors and subcontractors from the AAP requirement. If the OFCCP is unable to review all 17,000 companies presently subject to the AAP requirement,[8] the answer is not to relieve large numbers of contractors from their responsibility, but rather to follow the model of other law enforcement agencies such as the IRS and to establish clear guidelines for all contractors to follow, demand voluntary compliance, and audit that compliance on a sample basis.

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[4] The number of employees working at such contractors would be reduced from 27 million to 20 million.

Also according to these estimates, with the threshold set at 100 employees a $500,000 contract, 6,000 companies with 22 million employees would be covered. At 100 employees but a $250,000 contract, 8,200 companies with 25 million employees would be covered.

Indeed, it appears that the most severe option—that is, raising the minimum dollar limit to $1 million—will be chosen. Even accepting the Department of Labor's analysis and rationale for the threshold increases, it cannot be necessary to exempt (at least) a full 75 percent of all companies presently subject to the AAP requirement, reducing the number of employees covered by one quarter, to accomplish the stated goal.

A further problem with the proposed increase in thresholds is the lack for in-depth analysis of its effect on employment opportunities specifically for women and minorities and ultimately, on the economy and society as a whole. Even if it is true that the proposal would substantially reduce paperwork in terms of AAP preparation, its other effects—for example, on unemployment in depressed inner-city areas, on the number of employment discrimination complaints and the cost of defending against them, on the kinds of industries affected by the changes [9]—have been ignored.

B. Elimination of the concept of aggregation of contracts to reach the threshold

The Department of Labor apparently plans to eliminate the requirement that, if a company has more than one contract, its dollar amount (for the purpose of ascertaining whether it is over the threshold level) must be tne total, aggregated amount of all of its contracts.[10] This is unacceptable, especially in light of the decreased coverage proposals. The two proposals' combined effect is that a company that had

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[5] See the discussion of how goals and timetables work to eliminate employment discrimination in *Legal Aid Society of Alameda County* v. *Brennan*, 21 FEP 605, 620-21 (9th Cir. 1979): "[G]oals and timetables represent the contractor's own judgment as to the percentage of females and minority members that would be found in his work force if all available qualified persons applied for employment and if all selection processes operated in a completely nondiscriminatory manner. Given this premise, it is entirely reasonable to assume that a contractor who finds a lower percentage of women or minority members in a particular job category in his work force may well be able to correct the deficiency simply by removing obstacles to fair and equal employment . . . ." We would add that it is the creation of specific numerical goals that provides the incentive for such a contractor to discren and then remove the obstacles.

[6] See *Contractors Assn. of Eastern Pennsylvania* v. *Secretary of Labor*, 442 F. 2d 159 (3d Cir.), cert. denied, 404 U.S. 854 (1971), *Farmer* v. *Philadelphia Elec. Co.*, 329 F. 2d 3 (3d Cir. 1964); *Farkas* v. *Texas Instruments, Inc.*, 375 F. 2d 629 (5th Cir.), cert. denied, 389 U.S. 977 (1967); *United States* v. *New Orleans Public Service, Inc.*, 553 F. 2d 459-465-68 (5th Cir. 1977), vacated on other grounds, 436 21 FEP at 610 n. 14 (9th Cir. 1979). Cf. *Chrysler Corp.* v. *Brown*, 441 U.S. 281 (1979) (invalidating OFCCP disclosure regulations); *Liberty Mutual Ins. Co.* v. *Friedman*, 24 FEP 1168 (4th Cir. 1981) (invalidating OFCCP subcontractor regulations that cover insurance companies providing workers' compensation policies to government contractors).

[7] *Castillo* v. *Usery*, 14 FEP 1240, 1250 (N.D. Cal. 1976). The constitutional basis of the Executive Order program is discussed more fully in a Position Paper prepared by the Women's Rights Project of the Center for Law and Social Policy. We endorse the arguments made therein and incorporate them in this Paper as well.

[8] This is the only rationale given for the wholesale exemption of contractors effected by the proposed raising of the thresholds.

[9] We believe that because of their nature and structure, some industries, such as the trucking industry, would be almost completely excluded from the AAP requirement under the proposal. We are also concerned that some industries in which there are newly-created job opportunites, such as data processing, may be characterized by small (less than 100-employee) firms and small (less than $1 million) contracts. A more than cursory analysis of the effect of the proposed threshold change by industry must be conducted before revised regulations are published for comment.

[10] This requirement would be imposed under the regulations as promulgated on December 30, 1980.

1,000 employees and a dozen federal contracts of $999,999 each would not be required to prepare an AAP. This is an enormous loophole of which contractors can much too easily take advantage.

Again, a major weakness in the proposal is the lack of careful analysis of its impact on any aspect of employment opportunities or the economy. Nor has any analysis been undertaken of the relationship of the nonaggregation proposal to the raising of the thresholds. To our knowledge this question has not even been considered.

PAPERWORK AND REPORTING

A. Elimination of the AAP summary

Present regulations[11] require contractors subject to the AAP requirement to submit annual AAP summaries. The Department of Labor is considering the elimination of this requirement, and possibly, relying instead on the information provided in EEO-1 reports to assess contractors' progress under their AAP's. We strongly oppose this course of action.

Under present procedures, no systematic review of contractors' affirmative action plans is made. There is no established mechanism for insuring that a contractor's performance under its affirmative action plan will even be reviewed by the OFCCP. In fact, many contractors never file acceptable affirmative action plans at all. The requirement of annual submissions does not alone guarantee review of affirmative action programs, but it does impose on contractors a regular assessment of their affirmative action performance, and serves as an additional incentive to comply with affirmative action standards. The information provided on EEO-1 forms is woefully inadequate to any useful assessment of a contractor's success at fulfilling its EEO obligations. Essentially, effective evaluation of a contractor's compliance status is impossible under present reporting requirements. The AAP summary is a necessity.

Indeed, we do not see how the federal contract compliance program can be intelligently run without the AAP summary mechanism. If implemented, it would require federal contractors, for the first time, to report the level of their goals, hiring rates, under-utilizations, applicant flow and other data necessary to determine compliance with Revised Order No. 4. Without this information, OFCCP does not even know whether the large percentage of federal contractors which it does not review have affirmative action programs, let alone adequate goals and hiring rates. Submission of this information to DOL will also induce federal contractors to adopt appropriate programs, goals and hiring rates without placing a heavy resource burden upon OFCCP as necessitated by compliance reviews. Finally, the information may be fed into OFCCP's computerized system to enable greatly improved target selection and monitoring. Under the present informational system, OFCCP cannot effectively allocate its very limited resources to those reviews that will have the greatest impact upon employment of protected groups.

Some federal contractors' opposition to these reports is without merit and shortsighted. First, the AAP summary requirement will benefit those contractors who are now subjected to poorly selected reviews and who would not be reviewed if OFCCP could obtain the requisite data prior to targeting reviews. Second, it does not impose a new data collection requirement: there is already an OFCCP regulation which requires federal contractors to evaluate and update their AAP's annually.[12] Thus, contractors, already have the burden of obtaining such information. The only added element is that federal contractors now must submit the information to DOL. That requirement is hardly a burden, although it may be so viewed by those seeking to hide their noncompliance. Third, the AAP summary is not duplicative since OFCCP requires no such reports now. The EEO-1 information required by EEOC simply does not cover data such as goals, hiring rates, and under-utilization.

Thus, the AAP summary is the backbone of any streamlined enforcement program. Its use could substantially reduce paperwork for contractors while supplying both contractors and the OFCCP with the specific information necessary to assess the success of compliance efforts.

Moreover, the AAP summary provision was promulgated as the result of several court actions and decrees: *Legal Aid Society of Alameda County* v. *Brennan*, 381 F. Supp. 125, 8 FEP 178 (N.D. Cal. 1974), aff'd, 21 FEP Cases 605 (9th Cir. 1979); the WEAL Order, supra.

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[11] 41 CFR 60-2.14. This section of the regulations is presently in effect, having been published in final form on December 28, 1979 (44 FR 77000). However, because a form for the summary has never been adopted, the provision has not been implemented.

[12] 41 CFR 60-1.40(c).

B. Increase of Thresholds for Required Contractors to Submit EEO–1 Forms

The Department of Labor is considering raising the cut-off threshold for the requirement of filing EEO–1 forms to those contractors with 100 or more employees.[13] Again, to our knowledge, no impact analysis has been performed to assess the effect of this change. We note that submission of an EEO–1 form imposes a minimal recordkeeping and reporting burden, since the information required is so general that most companies keep these statistics as a matter of routine.

C. Allowance of combining several company facilities into one AAP

The Department of Labor apparently plans to allow contractors with more than one establishment to consolidate the AAP's for several small establishments into one, regardless of geographical area.[14] Our position is that combining should only be allowed for small establishments that are geographically proximate and in the same chain of command within the company. Moreover, if combining is permitted, the consolidated AAP must show availability data, under-utilization analysis, and goals and timetables for *each* establishment. It is necessary that this analysis be done by establishment because the availability determination is sensitive to extremely local variation.[15]

D. Creation of short-form AAP's for small companies

In addition to raising the thresholds substantially and eliminating aggregation, the Department is considering adopting a "two-tier" approach to the requirement of preparing written AAP's. A short-form AAP would be required of contractors in the first tier, tentatively decided to be those with 100 or more but fewer than 250 employees (and, of course, a contract of at least the threshold dollar amount). The short form would be based not on job groups, as in present AAP requirements, but on EEO–1 job categories.

While we do not oppose attempts to create a standardized, shortened, easier AAP, we strongly oppose the proposed means of achieving it. Most important, as noted above, EEO–1 form data is next to useless for evaluating an employer's work force;[16] Indeed, for years constituency groups have been urging the EEOC to revise those forms to require more specific data. If the EEO–1 data is too broad to be adequate for the EEOC's statistical and targeting purposes, how much more inadequate it is in the affirmative action context! The kind of data to be provided in an AAP summary—established goals and timetables and present utilization—would be much more useful.[17]

Furthermore, the full impact analysis necessary to conservative rule-making is again lacking for this proposal. The most glaring example is the lack of sophisticated anlysis of the effect of the definition of "small" companies as those with under 250 employees.[18] A large number of the new jobs created each year emanate from the small business sector; in fact it has been estimated by the Congressional committees with jurisdiction over small business that if every small business hired one more person, it would virtually eliminate unemployment in this country. Further, small businesses often supply the training ground for new entrants into a field, as women and minorities are likely to be; from that stepping-stone they can grow into higher-level managerial, technical, or professional positions in larger contractors. Given this reality, the potential impact of lessening the affirmative action obligations of contractors in the 100-250 employee range is very grave.

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[13] Present regulations require contractors with 50 or more employees and a contract of $50,000 or more to file the EEO–1 form annually. The December 30, 1980, regulations would have retained those levels and provided for an accumulation factor for the dollar amount.

[14] Present regulations require a separate plan for each establishment. The December 30, 1980, regulations would have permitted the grouping of small establishments in the same SMSA for AAP purposes, as long as the establishments were in the same "chain of command" within the company.

[15] In *Legal Aid Society of Alameda County* v. *Brennan*, supra, the appeals court affirmed provisions of the district court's order that to determine availability, contractors must adopt the labor area (of three possible choices: SMSA, County, or City) that has the highest minority population (unless there is a written justification for choosing another labor area). 21 FEP Cases at 619.

[16] The EEO–1 forms merely ask employers to report on the number of employees, by sex and race, in each of nine very broadly drawn job categories.

[17] As discussed more fully below, we might not oppose a modification of the standard AAP that makes job groups easier to ascertain—that is, by simply keying job groups to the company's salary structure—or that streamlines other aspects for smaller contractors (depending on the results of the impact analysis).

[18] *That is:* How many such contractors are there? Do they predominate in certain industries, or in certain regions of the country? How many women and minorities would be affected by the new regulation?

E. Updating and duration of AAP's: creation of a five-year exemption from compliance reviews for certain contractors

The Department contemplates adding a five-year exemption from compliance reviews for those contractors which have acceptable AAP's and/or have completed a compliance review and been found to be in compliance, and have agreed to link their recruitment and training with programs in the Employment Training Administration (ETA) of the Department of Labor.[19]

We oppose such an attempt to exempt contractors from on-going compliance reviews for so long a period of time and under such conditions. In the first place, five years is an extremely long time period in our fast-paced, constantly-changing, technologically-based economy. An AAP that is acceptable for a company in 1981 may well be completely irrelevant for that company's work force in 1936.[20] Second, the enforcement of conciliation or settlement agreements negotiated during a compliance review is often a difficult process requiring on-going monitoring; but the Department's 5-year exemption proposal makes no provision for it. Third, the 5-year exemption defies usual procurement practices in which ongoing review of compliance with the contract terms is a matter of course. Virtually all contract's involve performance of tasks to meet specified standards over the duration of the contract; there is no reason why the same should not be true of contractual affirmative action obligations. Fourth, there is no guarantee that the linkages with ETA will create any specific employment opportunities for women and minorities; to the contrary, ETA programs themselves are not necessarily nondiscriminatory or may operate to lock in the effects of past discrimination. Lastly, there is no need to create a rigid 5-year exemption to ensure that contractors who are generally in compliance are not subject to unnecessary and repetitive compliance reviews. That objective can be accomplished simply by rational scheduling of compliance reviews.

In any event, it appears that the 5-year exemption proposal is in need of substantial clarification. A mechanism for triggering a compliance review during the 5-year exemption period must be provided when a complaint of noncompliance is received; when the contractor's reports or other information indicates that compliance may be slipping; or when a major change in a contractor's employment circumstances occurs (such as award of a large contract, sudden growth, or changes in establishment location). Further, the data that a contractor would have to provide during the 5-year exemption period must be specified; at a minimum, the progress information provided in the AAP summary should be required, so that information about compliance in terms of promotion and pay practices, and not just in terms of hiring and training (the natural result of the ETA linkage) would be available. Finally, the terms of the ETA linkage aspects of the exemption must be specified much more precisely.

COMPLIANCE AND COMPLIANCE REVIEWS

A. Elimination of preaward reviews

The Department apparently plans to propose to eliminate the use of reviews prior to the award of contracts; for contracts of more than $20 million and creating 500-1,000 new jobs, it would substitute a procedure whereby affirmative action standards or other employer programs to ensure that women and minorities receive employment opportunities under the contract, would be negotiated before the contract would be awarded.[21]

We are completely opposed to any move to eliminate or reduce the applicability of the preaward program. The Government's obligation under the Constitution and Executive Order 11246, as amended, is to refrain from awarding contracts to companies that discriminate. A serious program to achieve equal employment opportunity through federal contract compliance must, at a minimum, attempt to ensure that as many prospective contractors as possible are in compliance as a condition of awarding contracts. No program that does not enforce that requirement can be seriously committed to EEO. The preaward review is the only tool available to accomplish this, and cannot be abandoned consistent with the Government's obligations.[22]

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[19] The oral presentation we received was insufficient for us to determine the exact contours of the exemption under consideration.

[20] Again, we note with dismay the lack of an analysis of the impact on employment opportunities for minorities and women for this proposal.

[21] The exact nature of the programs—training? goals and timetables?—as well as the procedure by which the negotiation would occur, are not clear from the information we have presently.

[22] Furthermore, elimination of the preaward review for educational institutions violates the WEAL Order. Thus, at least for prospective contractors that are educational institutions, the preaward requirements prescribed in the WEAL Order must be preserved, on pain of contempt.

It appears that the only effort the Department plans to make in this regard is to provide for negotiations regarding new job opportunities. While ensuring that new job opportunities go to women and minorities without discrimination and that barriers to that result are removed is important, hiring is not the only focus of the Executive Order. Contract awards to contractors that maintain discriminatory practices in pay, promotions, and treatment of existing employees are prohibited as well; indeed, practices that lock women and minorities into the low-paying jobs in a company account in great measure for these groups' lower economic status (compared to white males). The Department's proposal ignores this entire aspect of discrimination.

B. Removal of OFCCP's authority to find noncompliance when a conciliation agreement is inadequate

Under the present regulations, when a conciliation agreement is reached, the OFCCP reserves the right to make determinations of noncompliance if it later finds that the commitments in the agreement were not sufficient to achieve compliance. Sec. 60-1.20(b). The Department plans to remove this reserve of authority. This would in effect guarantee a contractor that once it entered into a conciliation agreement it would be immune from inquiry into its employment practices, regardless of the adequacy of the terms of that agreement. While inadequate compliance agreements should not as a rule be entered into, it is possible that a contractor's changed circumstances, a later discovery of information withheld during the compliance process, or other intervening factors might render the terms of a particular agreement insufficient to achieve compliance. For the Department to give up its discretion to find noncompliance in such circumstances betrays a serious lack of commitment to effective enforcement.

C. Omission of standards for AAP's

The Department plans to omit from the regulations those parts of Revised Order No. 4[23] that supply suggestions to contractors as to how they may comply with the standards regarding acceptable AAP's, and to republish them (or sections of them) as an interpretive bulletin. We do not oppose this proposal as long as the existing provisions are adopted in full. We have historically supported these sections of Revised Order No. 4 because employers need more guidance, not less, on all aspects of preparing and implementing AAP's. Standardization of AAP requirements can decrease the burdens of compliance that contractors feel by clarifying their responsibilities and ensuring that major areas of their practices are not overlooked.

D. Declaration of under-utilization

The present regulations require a contractor to make a declaration of under-utilization whenever there is a short fall between the expected and actual number of minorities or women in a job or job group. The Reagan proposal is to put in a "tolerance level." The tolerance level would be in the neighborhood of 10 percent to 20 percent. Thus, if the tolerance level was set at 20 percent and the expected availability of minorities was 40 percent, then the contractor would neither have to declare under-utilization nor prepare an AAP unless the acutal proportion of minorities in the job group was less than 32 percent.

We first note that there is no rationale provided as to the impact of a tolerance range of 10 percent-20 percent, either on contractor compliance costs or, more importantly, on employment opportunities for women and minorities. But most important, allowing this big a range of variation would appear to condone levels of under-utilization that the courts have held to be prima facie evidence of unlawful discrimination under Title VII of the Civil Rights Act of 1964.[24] The result of this proposal is unconscionable and untenable: that a contrator with under-utilization so substantial that it alone is evidence of unlawful discrimination, will not even be required to develop a plan to correct the problem as a condition of being awarded a federal contract. We support the present regulations' concept that the ultimate objective of setting goals and timetables is for the contractor to achieve parity with availability of qualified minorities and women in the relevant labor market.

If the objective of this proposal to revise under-utilization determinations is to avoid the sometimes unworkable results of the strict parity approach, in which for example, contractors must find deficiencies of a fraction of a person, we believe that other methods, which do not involve condoning racial discrimination, can be devised to accomplish this goal. In fact, the overall effectiveness of the contract compliance programs would be greatly enhanced if the OFCCP regulations were revised to change the definition of job groups now used in AAP development. Job groups are defined as "one or a group of jobs having similar content, wage rates, and opportunities."[25] This definition has proven inadequate when applied to the organizational characteristics of many companies and common to many industries. In a great number of cases, the job groups are defined so narrowly that they produce goals which are numerically insignificant (the "fraction of a person" problem). In a great many other cases, the definition results in a broad mix of traditional and nontraditional jobs (for example, nurses and engineers) being included under one "job group" and thereby generates placement which tend to perpetuate discrimination or otherwise to allow for goals which are not qualitatively meaningful.

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[23] Apparently, Subpart C, "Methods of Implementing the Requirements of Subpart B," §§ 60-20--60-2.26.

[24] Cases applying this principal are legion; among the principal ones are, for example, *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971); *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975); *Hazelwood School District* v. *United States*, 433 U.S. 299 (1977).

Thus, a more appropriate approach would be to establish job groups by salary or wage increments within EEO-1 categories (professionals, sales, etc.). This would focus attention on the real purpose of goals and timetables—the increased participation of women and minorities in better-paying jobs, regardless of organizational structure. It is this type of change in utilization and availability analysis which should be undertaken.

E. Backpay and other retrospective relief

The Department has stated that it plans to request comments on the present regulations' requirement that contractors remedy past discrimination in order to be found in compliance with their contractual obligations,[26] but it does not at this time propose any specific changes in the regulations.

We are outraged that rescinding the requirement of remedy through backpay is even contemplated. Relief for the consequences of unlawful activity is necessarily an integral part of the federal contract compliance program. To give it up as an enforcement tool—even to consider giving it up as an enforcement tool—signals the administration's intent to retreat from effective enforcement.

First and most important, unless appropriate resitution for victims of the contractor's discriminatory practices is sought and obtained, the Government may well find itself in the constitutionally impermissible position of sanctioning its contractors' discriminatory practices. Second, "the availability of restitutionary relief * * * provid[es] an incentive to eliminate discriminatory practices."[27] This incentive has proved to be of unparalleled effectiveness in effectuating the purpose of the Executive Order; indeed, it is well recognized by the entire labor relations community that there cannot be effective law enforcement without having some "make whole" provision to remedy discrimination. In these circumstances, we are concerned that the department is even contemplating a retreat from what is now a traditional "make whole" remedy, well understood and accepted by employers in the context of the National Labor Relations Act, the grievance and arbitration process, the equal Pay Act and Title VII. We see no valid reason why the Executive Order should require less as an appropriate remedy for discrimination.

Changes in the Substantive Sex Discrimination Guidelines

The Department apparently plans to revise the substantive sex discrimination guidelines in (at least) three areas: sexual harassment, pregnancy discrimination, and wage discrimination. As to sexual harassment, the Department would omit that section of the EEOC's parallel guideline that refers to a contractor's responsibility for the sexually harassing acts of nonemployees of which the contractor's agents or supervisors know or should know, to the extent that these acts and their effect are within the contractor's control.[28] As to pregnancy discrimination, the Department would omit that section of the EEOC's parallel guideline that interprets the well-established principle that neutral policies with a disparate impact on a protected class may be unlawful in the context of neutral employer policies covering pregnancy and related medical conditions.[29] As to wage discrimination, the Department would delete the paragraph added in the December 30, 1980, regulations that refers to wage discrimination where women and men do not perform equal work within the meaning of the Equal Pay Act.[30]

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[25] 41 C.F.R. 60-2.11(b).

[26] 41 CFR §§60-1.26(a)(2), 60-2.1(b). This provision stems from the Executive Order's authorization of the imposition of sanctions against contractors for failure to comply with the EEO provisions of the contract (section 209 of the Executive Order).

[27] *United States* v. *Duquesne Light Co.*, 423 F. Supp. 507, 13 FEP 1608 (W.D. Pa. 1976).

[28] *See* the EEOC Guidelines on Discrimination Because of Sex, 29 CFR 1604.11(e).

[29] 29 CFR 1604.10(c), which provides: (c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

The changes proposed for sexual harassment and pregnancy discrimination would render the substantive requirements under Executive Order 11246, as amended, directly inconsistent with contractors' obligations under Title VII. It is utterly ridiculous for the Department of Labor on the one hand to assert that it is attempting to minimize inconsistent and duplicative EEO requirements for business, and on the other to set out substantive guidelines for contractors that do not coincide with the EEOC's interpretation of Title VII law, with which contractors must also comply. Not only are these proposals inconsistent with EEOC's interpretive guidelines, which are entitled to and have been accorded great deference by the courts, but also with established case precedent.[31] Regardless of the Department of Labor's interpretation of the law, contractors should not be subject to conflicting obligations.

With regard to wage discrimination, while the present regulations, without the additional explanatory paragraph, do state the law,[32] we urge the Department to incorporate the explanatory material so that contractors can be better apprised of their obligations in this area.

OBLIGATIONS OF CONSTRUCTION CONTRACTORS

With regard to the regulations governing construction contractors, we endorse the Comments filed by the Women's Rights Project of the Center for Law and Social Policy.

CONCLUSION

Our lack of comment in this Paper on any other matters is not to be construed as acquiesence to proposed changes, but rather to a desire to limit our comments at the present time to highlight certain issues and to lack of information about the specifics of the Department's proposed changes. We reiterate our objection to the process employed here, whereby we are forced to comment on revisions that we have never seen. We reserve the right to amplify our comments further once we have had the opportunity to review specific proposals.

In sum, we oppose any proposals that would weaken enforcement of contractors' obligations under Executive Order 11246, as amended. Such proposals are of particular concern in light of the concurrent cut-backs in social programs due to the Administration's federal budget cuts. In the short run at least, women and minorities will be disproportionately affected by these cut-backs, and will be forced to bear a greater proportion of the resultant economic sacrifices. To deprive them at the same time of strong and effective enforcement of the mandates that protect them from invidious discrimination when they are employed is intolerable. It makes a travesty out of this nation's commitment to equal opportunity for all.

COMBATTING SEX DISCRIMINATION: THE NEED FOR CONTRACT COMPLIANCE REQUIREMENTS

The past ten years have been marked by major gains for working women. Women now have access to jobs previously closed to them. Lawsuits have established legal precedents for equal opportunity and have resulted in millions of dollars in back pay and sweeping reforms through court-ordered affirmative action programs. Equal pay settlements have made equal pay for equal work more than an abstract concept.

The decade of the 1970's can best be characterized as a decade of access, when enforcement of equal opportunity laws resulted in the opening up of new opportunities. Yet, in spite of these breakthroughs, the overall economic status of women has improved very little. According to the latest government statistics, women currently earn 59¢ for every $1.00 men make. Twenty-five years ago, women made 64¢ for every $1.00 men made. In every major occupational group, the earnings of fully employed women lag significantly behind those of men in the same occupations. Women sales workers make on the average 52¢ for every $1.00 men sales workers make. Women managers and administrators make an average of 58¢ for every $1.00 earned by men in these jobs. Even in clerical jobs, women clericals make an average of 65¢ for every $1.00 earned by male clericals.

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[30] That paragraph, which was the second paragraph in §60-20.5(a), provides: While the more obvious cases of discrimination exist where employees of different sexes are paid different wages on jobs which require substantially equal skill, effort and responsibility and are performed under similar working conditions, compensation practices with respect to any jobs where males or females are concentrated will be scrutinized closely to assure that sex has played no role in the setting of levels of pay.

[31] *See* that is, *Nashville Gas Co.* v. *Satty*, 434 U.S. 136 (1977) (invalidation of seniority and leave policies which placed an undue burden on pregnant women as unlawful sex discrimination); *EEOC* v. *Sage Realty Co.*, 507 F. Supp. 599, 21 FEP 1521 (S.D.N.Y. 1981) (employer held responsible for sexual harassment of woman employee by nonemployees that resulted from employer dress code requirement of a revealing uniform).

[32] "The contractor's wage schedules must not be related to or based on the sex of the employees."

For minority women, the economic consequences of the burden of double discrimination are even worse. Black women who work full time earn only 75¢ for every $1.00 black men earn and 54¢ for every $1.00 white men earn.

Thus, although some women have gained access to new jobs and occupations, they have made little progress toward economic equalilty with men. Progress has been slow because discrimination is deeply imbedded not only in corporate policies but also in individual attitudes and practices.

One of the major enforcement tools is Executive Order 11246 (as amended) which forbids discrimination in employment by federal contractors and requires them to undertake affirmative action in hiring, promotion, pay and training for women and minorities.

The Department of Labor's Office of Federal Contract Compliance Programs enforces this Executive Order which covers approximately 29,000 contractors who employ 31 million persons (one-third of the labor force) and involves over $80 billion in federal contracts.

Without the Executive Order and strong enforcement of its implementing regulations, there would be no women in the coal mines, in the construction industry, or in the trucking industry.

Without the Executive Order, the vast majority of educational institutions would not have promoted any women into the higher ranking administrative and teaching positions.

Without the Executive Order, there would have been little, it any, change in the banking industry, one of the largest employers of women. Because of the Executive Order, banks have begun, although slowly and with considerable resistance, to change their hiring and promotion practices. In 1960, 12.2 percent of bank officials/financial managers were women—only one-half percent more than there were ten years earlier in 1950. By 1970, the percentage had increased to 17.6 percent; by 1979, it had nearly doubled to 31.6 percent. Enforcement of Executive Order 11246 played a major role in this improvement.

At the time that enforcement efforts are beginning to produce results—creating new opportunities for women to be treated equally with men in the job market, proposals are being made which would eliminate the existing enforcement mechanisms, and would bring to a halt the progress made during the past ten years.

A prime example of the potentially devastating effects of "de-regulation" is the Harris Bank case. In January, 1981, U.S. Administrative Law Judge Rhea M. Burrow recommended that Harris Trust and Savings Bank, Chicago's third largest bank, pay $12,167,515 to some 1800 women and minority employees who are the victims of discriminatory hiring, pay and promotion practices. The case dates back to 1974 when Women Employed first filed a complaint with the U.S. Treasury Department, charging that Harris' employment practices violated Executive Order 11246 which requires affirmative action by firms doing business with the federal government. The U.S. Department of Labor entered the case in 1975, and in 1977 found Harris guilty of violating the Executive Order.

Burrow's decision confirms the Labor Department's 1977 findings. Relying both on statistical data provided during the trial by the government, and on the testimony of employee witnesses provided by Women Employed, Burrow said that Harris had "failed to rebut substantial evidence provided by the government showing the continuing effects of discrimination." Harris violated Executive Order 11246, Burrow found, "by engaging in various discriminatory practices well after the Executive Order was enacted."

Women Employed's case against Harris Bank has been watched closely because it is the first in which the federal government has sought to withdraw deposits from a bank bacause of discrimination, and the first time the government has sought backwages for an "affected class" of bank employees through administrative sanctions.

Women Employed became involved in 1974 when women employees at Harris contacted the organization with their complaints of discriminatory hiring, placement, training, salary and promotion policies. Women and minorities found themselves in dead-end jobs, while similarly qualified white males hired at the same time advanced in their careers. Women with college degrees, for example, were hired for clerical positions, while white male college graduates were offered training and jobs im promotional lines. Even when the bank opened up training programs to women, the training and placements provided were inferior, so the women did not become "qualified" for better jobs.

Looking at this evidence, Women Employed reached two conclusions: the bank's required affirmative action program was inadequate, and there were many women and minorities who deserved back wages, training and promotions because they had been denied advancement opportunities. Providing back pay for this "affected class" of Harris employees was a crucial part of the case, because no future afirmative action plan would compensate them for past discrimination and loss of salary.

Harris Bank has appealed to Secretary of Labor Raymond Donovan in an attempt to overturn the Administrative Law Judge's decision. In addition, the American Bankers Association has filed an amicus brief asking the Secretary of Labor to delay a decision in the case until the current discussions about regulations under Executive Order 11246 have been completed. Obviously, the ABA hopes that deregulation will substantially weaken the enforcement apparatus and remove sanctions.

The Harris Bank case graphically demonstrates the serious economic effects of discrimination and the need for government efforts to ensure equal opportunity for all in the job market. Without enforcement of government regulations requiring equal opportunity in hiring, training and promotions, women and minorities will continue to suffer discrimination.

Because enforcement of the Executive Order has resulted in sanctions including back pay awards and debarments, employers have begun to complain loudly and angrily that the affirmative action requirements spelled out in the regulations are burdensome and counterproductive. However, history has shown, and the experience of women and minorities confirms unequivocally, that nothing less than concrete programs with goals and timetables can overcome years of discrimination and exclusion. Prior to establishment of the present federal contract compliance program with Executive Order 11246 in 1964, a number of Executive Orders, going back as far as 1941, were issued to encourage federal contractors to hire more minorities through voluntary "Plans for Progress." But after a number of years of such Plans for Progress, it became clear that voluntary compliance without sanctions for noncompliance was a total failure. Virtually no real change had been made in hiring practices of federal contractors. This failure provided the backdrop for a natural evolution to the present system in which sanctions are available for those contractors that fail, after repeated efforts at conciliation, to take steps to comply with their contractual obligations to provide equal opportunity.

In recent years, the federal contract compliance program has undergone major changes. In early 1978, President Carter announced a total reorganization of civil rights agencies. Before reorganization, the OFCCP had overall responsibility for reviewing federal contractors and enforcing Executive Order 11246, as amended; but eleven different compliance programs within the contracting agencies (for example, Treasury, HEW, Defense, etc.) had the actual responsibility for monitoring specific industries. The federal contract compliance effort was a bureaucratic maze, with different handbooks, procedures, rules and guidelines in each agency, and a poor record of enforcing the Executive Order.

As a result of the reorganization, on October 1, 1978, the entire contract compliance program was consolidated in the Department of Labor's Office of Federal Contract Compliance Programs. The new OFCCP got off to a slow start, bogged down by untrained staff inherited from the other agencies and its own lack of creative enforcement approaches. However, by 1980, the agency had developed an enforcement apparatus with the potential for investigating and dealing with problems of discrimination.

In fiscal year 1980, over 4,000 persons were awarded nearly $9.3 million in back pay through increased conciliation agreements and use of sanctions. This is more than the total back pay awarded in the two years preceding consolidation. Since 1965, 27 federal contractors have been debarred from doing business with the government. Over half of those debarments occurred in the past three years.

Of particular importance is the investigation of affected classes of women and minorities who suffer from the effects of past discriminatory treatment. Essentially, affected class analysis is the key to attacking systemic discrimination by federal contractors. In fiscal year 1980, 391 affected class cases were being handled, almost all of which were initiated after consolidation.

Despite this progress, however, much work still remains to be done to guarantee equal opportunity at work.

An examination of the current economic status or working women reveals the pervasiveness and complexity of employment patterns which deny women equal opportunity.

Women continue to be denied access to higher paying jobs

In 1960, 52 percent of all women were employed in just four occupations: clerks, saleswomen, waitresses, and hairdressers. In 1978, 47 percent of all working women could be found in these categories.

Twenty years ago, 12 percent of women were professional and technical workers—over half of these were teachers and nurses. Today, only 16 percent of women work in professional and technical positions—still over half of these are teachers and nurses.

Twenty years ago, 5 percent of working women were managers. Today, only 6 percent are managers.

Twenty years ago, 1 percent of working women were in skilled craft jobs. Today only 2 percent of working women hold these jobs.

OCCUPATIONAL DISTRIBUTION OF WORKING WOMEN

[In percent]

Occupation	1960	1978
Clerical workers	30.3	34.6
Service workers, except private household	14.8	17.7
Professional and technical workers	12.4	15.6
Operatives	15.2	11.8
Sales workers	7.7	6.9
Managers and administrators	5.0	6.1
Private household workers	8.9	2.9
Craft workers	1.0	1.8
Other	4.3	5.5
Total	100.0	100.0

Source: U.S. Department of Labor, Bureau of Labor Statistics.

Traditionally, women have been placed in dead-end jobs with no career paths for advancement; they often face a "catch-22" situation. In order to qualify for more responsible jobs, certain training and certain job experience are necessary, but women are denied access to jobs which would qualify them for higher paying positions. And then employers assert that no "qualified" women can be found to fill job openings.

In recent years, some women have gained access to jobs with possibilities for promotion. However, these jobs are often limited to certain classifications or departments where career paths and future earning power are severely limited. For example, most insurance women are usually found in the less lucrative personal lines rather than commercial lines. Women work in "inside" sales jobs where opportunities for advancement are limited, while men are placed in "outside" sales positions which are higher paying and are the route to higher level positions. Women are concentrated in staff, personnel, or administrative departments where salaries are lower and opportunities limited. In retail sales, women are assigned to sell low-priced items while men are placed in the "big ticket" higher commission departments.

Even as a few women have finally succeeded in breaking the barriers and entering job classifications traditionally held by men, women remain clustered in the lowest-paid positions in these classifications. Their progression up the career ladder is slower than for their male counterparts; women predominate in the lowest salary grades for officers.

When women are initially placed in dead-end jobs, their opportunities for advancement are obviously limited. When certain jobs are viewed as "women's jobs" and others are viewed as "men's jobs," mobility for women is reduced and economic achievement is limited. When women are promoted more slowly than men even where their qualifications, skills and experience are comparable, women never achieve salaries commensurate with male co-workers in similar jobs.

Women are denied equal pay for equal work

Historically, women and men worked side by side doing the same work, holding the same job title, but the men earned higher salaries. This custom was justified by now repudiated beliefs about the innate inequality of men and women and by the always inaccurate notion that women's earnings were not necessary for their support or the support of their families. Today, blatant wage discrimination still exists, despite its illegality. But, in many instances, the "custom" of paying women less than men is maintained through intricate job classification systems that create diverse job titles to mask work that is virtually the same. Often women are placed in lower job codes than men even though their work is comparable to that of male co-workers in higher job codes. For example, women may hold the title of "assistant manager" while men are higher paid "managers"; yet their actual experience, skill and job content are comparable. The pervasiveness of this practice and its discriminatory effect is clear when we look at the national statistics: In every major occupational group, the earnings of fully employed women lag significantly behind those of men in the same occupations:

AVERAGE WEEKLY EARNINGS BY SEX—1978

Occupation	1978 average weekly earnings		Women's salary as a percent of men's
	Men	Women	
Sales workers	$335	$175	52
Blue collar workers	327	216	66
Managers and administrators	422	247	58
Clerical workers	301	195	65
Service workers, except private household	223	147	66
Professional and technical workers	392	280	71

Source: U.S. Department of Labor

Jobs traditionally held by women rate lower salaries

The custom of valuing "women's work" less than men's is maintained through company job classification systems that set salary rates and ceilings with little or no consideration of actual job content. The extent of such wage discrimination is only beginning to be uncovered. In clerical jobs for example, it is not unusual for corporate salary schedules to fail to distinguish between lower skilled and higher skilled clerical jobs even though jobs within the clerical classification are often very different in terms of skills required. The principle used to set salaries is the fact that women hold these jobs rather than standards based on objective analysis that results in wage rates based on actual skills involved. The tenacity of this belief and custom is indicated by the fact that secretarial wages have not significantly increased even in the face of a severe secretarial shortage—now estimated at approximately 20 percent or 60,000 positions per year.

These patterns of discrimination demonstrate the need for concerted action to eliminate barriers to equal opportunity for working women.

The Office of Federal Contract Compliance Programs is a critical government program with responsibility for undertaking that kind of concerted action. Back pay awards to the victims of discrimination are not only required to remedy the economic damage these individuals suffer, but to provide a clear disincentive for continuing discriminatory practices. Requiring employers to establish programs with goals and timetables for eliminating existing patterns of discrimination is necessary to measure progress toward equal opportunity. Requiring that federal contractors who have 50 employees and $50,000 in federal contracts have written affirmative action policies simply ensures that federal contract dollars will go to employers who are willing to make a real commitment to equal opportunity.

Thus, current proposals to reduce the number of federal contractors who must comply with equal opportunity requirements, eliminate back pay awards, and eliminate specific programs with goals and timetables for achieving equal opportunity will bring to a halt the progress toward equality which has just begun. Proponents of this deregulation have suggested that the bureaucracy and red tape of government regulations have inhibited their efforts to provide equal opportunity. In their view "deregulation" is the answer to the problem. On the contrary, what is needed are streamlined and strengthened government regulations to ensure equal opportunity in the job market.

Today, 8.5 million women work to maintain their families. Among these are 2 million women whose husbands are "absent", 2.3 million women who are widowed and 4 million women who are divorced. In addition, 11 million single American women are working to maintain themselves. Almost 13 million married women with children are working. Forty percent of black households are female-headed, dependent solely or primarily on the woman's livelihood.

All of these women's earnings are crucial to the well-being and economic stability of their families. These women need and are entitled to equal opportunity. Women have a right to expect that employers who do business with the federal government will be required to provide equal opportunity for all employees. Unfortunately, the reality is that many employers will not practice equal opportunity voluntarily. The continuing pervasiveness of discrimination is a testament to that fact. This nation's commitment to economic equality is given meaning by Executive Order 11246 and the enforcement apparatus of the OFCCP. The continued existence of those regulations combined with vigorous enforcement efforts are critically needed now to maintain that commitment.

WOMEN AND MINORITIES NEED NOT APPLY

Death knell for affirmative action

"Too many regulations, too much paper work, reverse discrimination, and intimidating tactics," cry the Reagan administration and Congressional conservatives as they hatch legislative and executive strategies to restrict equal employment opportunity by attacking affirmative action.

The concept of affirmative action is only 15 years old and arose from a recognition that antidiscrimination laws alone could not correct the negative effects of generations of discrimination. Affirmative action programs require that employers seek women and minorities actively. Goals and timetables are established for the hiring and promoting of women and minorities. Rather than being "arbitrary quotas," they are the yardsticks with which employers and workers can measure the progress toward the ending of employment discrimination.

Affirmative action plans can be instituted: voluntarily; by court order as a remedy for proven discrimination under title VII of the Civil Rights Act of 1964; as required of federal contractors by Executive Order 11246.

Executive Order 11246, issued by President Johnson, underlines the government's obligation to prohibit the use of federal funds by those who discriminate. The Office of Federal Contract Compliance Programs (OFCCP) at the Labor Department enforces the Order and can withhold federal funds.

Important cases have affected the banking, coal mining, and construction industries. WEAL alone has filed over 300 complaints since 1970 in higher education.

Executive attacks on E.O. 11246

Some Reagan advisors have urged that the Executive Order be withdrawn or rewritten. In the meantime, the Department of Labor is making major changes in the regulations which enforce the Order. In contrast to the 4-year analysis and discussion which went into previous regulations, this administration intends to finalize its changes by July 30, 1981.

The proposed changes include reducing the number of employers with obligations under the Order by limiting the requirement for a written affirmative action plan to those who employ at least 250 people and hold a government contract worth $1 million. At present, those with 50 employees and $50,000 in contracts must have written plans. Administration officials also are discussing proposals which would eliminate back pay remedies and pre-award reviews.

These regulatory changes, along with the proposed budget cuts for the enforcement agencies (20 percent for EEOC and 10 percent for the agency which includes OFCCP) would effectively cripple the federal government's enforcement programs. It is certain that these proposals will substantially reduce the pressure on employers to practice affirmative action. The EEOC and OFCCP will be helpless to enforce the law, and the doors to employment opportunity will be slammed in the faces of women and minorities who can no longer count on the protection of the federal government.

THE STATUS OF EQUAL EMPLOYMENT OPPORTUNITY ENFORCEMENT, AN ASSESSMENT TO FEDERAL AGENCY ENFORCEMENT PERFORMANCE—OFCCP AND EEOC

INTRODUCTION

This report is an assessment of the performance of the Office of Federal Contract Compliance Programs of the Department of Labor and the Equal Employment Opportunity Commission. It is based on the results of various aspects of a comprehensive advocacy program developed by Women Employed, a national organization of working women.

Women Employed has over seven years of experience in assisting working women with problems of discrimination and in monitoring the performance of equal opportunity enforcement agencies. Women Employed's advocacy program includes a Job

Problems Counseling Service for women with discrimination complaints, development of cases that come in through this service, monitoring of agency performance in handling the cases, and development of specific, detailed proposals for improving enforcement efforts. Through the Women Employed Advocates, a national lobbying network of individuals and organizations concerned with equal opportunity, the organization monitors cases and enforcement nationwide and lobbies for implementation of proposed reforms. To date, numerous proposals developed by Women Employed have become part of enforcement agency policy and procedure. In addition, Women Employed conducts statistical analyses to measure both overall agency performance as well as standards within specific districts or regions.

THE CURRENT ECONOMIC STATUS OF WORKING WOMEN

Each year the government spends nearly $180 million to enforce equal opportunity laws. This enforcement apparatus has the potential to reduce economic discrimination against women and minorities. The actual performance of the enforcement agencies must be judged against the backdrop of the economic status of these affected groups. The past ten years have been marked by major gains for working women. Women now have access to jobs previously closed to them. Lawsuits have established legal precedents for equal opportunity and have resulted in millions of dollars in back pay and sweeping reforms through court-ordered affirmative action programs. Equal pay settlements have made equal pay for equal work more than an abstract concept.

Despite these breakthroughs, the overall economic status of women has improved very little. According to the latest government statistics, women now earn only 59¢ for every $1.00 men make. Twenty-five years ago, women made 64¢ for every $1.00 men made.

In fact, women still remain clustered in lower paying jobs. Ninety percent of all women fulltime workers earn less than $15,000 compared to 52 percent of men. Less than nine percent of women earn between $15,000 and $25,000 versus 35 percent of men. Nearly one of every three female-headed households is living below the poverty level, compared to one out of eighteen male-headed households.

Women continue to be denied equal pay for equal work. In every major occupational group, the earnings of women are significantly less than those of comparable men. In sales work, women earn 52 percent of what men earn; in clerical work women earn 65 percent of what men earn; for managers and administrators women earn 59 percent of what men earn.

Women overall continue to be denied access to higher-paying jobs. In 1960, just over half of all working women were clerks, saleswomen, waitresses, and hairdressers. Today just under half of all working women are in these categories. Twenty years ago, 12 percent of women were professional and technical workers—over half of these were teachers and nurses. Today, 16 percent are professional and technical workers—still over half are teachers and nurses. Twenty years ago 5 percent of working women were managers and administrators. Today 6 percent are in these jobs. Twenty years ago 1 percent of working women were in skilled craft jobs. Today 2 percent are in those jobs.

Even as a few women have finally succeeded in breaking the barriers and entering job classifications or training programs traditionally reserved for men, women still end up in the lowest-paid positions of these categories, their progression up the career ladder is slower, and opportunities for advancement are limited.

Behind the statistics are women's real experiences with discrimination at work. The following examples are taken from the files of Women Employed's Job Problems Counseling Service. (Appendix I)

A position in sales requiring no experience was advertised in local Chicago newspapers. When a woman called to express interest in the position, she was informed that it had already been filled. A friend of hers, a male, called immediately afterward and was asked to come in for an interview. When the woman called back under another name, she was again told the position was no longer available.

A suburban police department recently hired its first woman police officer, a divorced mother who has been supporting her three children for 12 years. The woman was put on the department's obligatory probationary period. Since joining the force, the woman has endured gender harassment from every officer on the force. When she is sent out alone, her calls for backup are responded to slowly. When she complains to the Chief of Police about physical and verbal harassment, he replies that there were no problems until she joined the force. When she took her complaints to the village trustees, they responded by suggesting that she should be home taking care of her children instead of working as a police officer. As the end of her probationary period draws near, the woman officer wonders how she can be judged impartially on her performance as a police officer and not as a woman police officer.

A woman who had a supervisory position at a large company was working on a project with a man from another department. After a few weeks, this man propositioned her; she explained that she would never consider having an affair with a fellow employee and was not interested. The same man made overtures on several other occasions. Finally, at a convention, he pushed her onto a bed before she was able to get him out of her room. One month after that incident, the man told a vice-president of the company that he could not work with her any longer. The vice-president decided to demote the woman, and upon learning of the demotion, the woman quit. Several months later while job-hunting, the woman learned that someone at the company was giving a reference which stated that she had not been productive at her job and that she had been involved in a messy affair with a co-worker.

A woman worked at a chemical company as a "blender." She was the only woman working in that position in the company. The woman found out that she was pregnant, and the company accommodated her by transferring her to lighter duties. She worked until the day before she had her baby. The comapny paid for her hospitalization costs but she was not given any disability benefits. After a 7-week leave, the woman returned to the company and bid for her old position. She was told that she could not bid for the job which was subsequently awarded to a man with less seniority. Then the company told her that she could only have one job—working in a section with a very hazardous, carcinogenic chemical. She was not trained to handle this chemical, nor did she receive information on safety precautions. The woman protested and was fired from the company.

One suburban government decided to re-evaluate the salary scales of all its municipal employees. In the process, the decision was made to upgrade the salaries of maintenance workers (all males). When it was discovered that secretarial jobs were rated the same as maintenance workers, the Board of Trustees voted to hold secretarial salaries at the lower level since "women's work" is paid less in the private sector.

The only noticeable area of progress in employment status of women is the opening of many occupations which were previously closed to them. It is likely that today, virtually every occupation includes at least one woman. However, the severe economic consequences of discrimination persist, and the vast majority of working women are still experiencing some form of discrimination on the job. These conditions are pervasive and deeply rooted. The facts of women's current economic status outline starkly the challenges that still remain for the government agencies whose performance is analyzed in this report.

ANALYSIS OF ENFORCEMENT BY THE OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

The OFCCP is responsible for enforcing Executive Order 11246 as amended, which forbids discrimination in employment by federal contractors and requires them to take affirmative action in hiring, promotion, pay, and training for women and minorities. The contract compliance program covers approximately 29,000 contractors who employ 31 million persons and involves over $80 billion in federal contracts. The OFCCP has a staff of 1400 and a budget of $53 million.

In early 1978, President Carter announced a total reorganization of civil rights agencies. Before reorganization, the OFCCP had overall responsibility for reviewing federal contractors and enforcing Executive Order 11246, as amended, but eleven different compliance programs within the contracting agencies (for example, Treasury, HEW, Defense, etc.) had the actual responsibility for monitoring specific industries. The federal contract compliance effort was a bureaucratic maze, with chaotically different handbooks, procedures, rules and guidelines, and no success in enforcing the Executive Order.

As a result of the reorganization, on October 1, 1978, the entire contract compliance program was consolidated in the Department of Labor's Office of Federal Contract Compliance Programs. The new OFCCP got off to a slow start, bogged down by untrained staff inherited from the other agencies and its own lack of creative enforcement approaches. The enforcement activity which is now underway demonstrates the potential for the future if this activity actually expands as projected, and if enforcement results are achieved in cases currently pending. Overall, the main accomplishment of the OFCCP has been putting an enforcement mechanism in place.

These first efforts have included increased use of sanctions. Since 1965, 24 federal contractors have been debarred from doing business with the government. Fully half of those debarments occurred in the past three years. In the past several months, the OFCCP has used new expedited hearing processes twice—to debar Prudential Insurance for a minimum of $180 million in contracts, and to deny Firestone Tire and Rubber Co. its lucrative government business. In the case of Firestone, Labor Secretary Marshall himself made the finding of violations, reversing the decision of the administrative law judge.

The second improvement has been the development of new in-depth investigative techniques outlined in a new comprehensive compliance manual. The manual is a much-needed tool for strengthening the enforcement apparatus of the agency. It is particularly responsive to complaint procedures, the rights of charging parties, interview techniques and standards of affected class analysis. While this has resulted in fewer compliance reviews, those which have been conducted have been more exhaustive and thorough.

Of particular importance is the investigation of affected classes of women and minorities who suffer from the effects of past discriminatory treatment. Essentially, affected class analysis is the key to attacking systemic discrimination by federal contractors. In the first half of 1980, 139 affected class cases were being handled. Prior to consolidation, the number was negligible and occurred only in the case of third party intervention, as in the Harris Bank case. In just the first half of fiscal year 1980, over 3000 persons have been awarded nearly $7.5 million in back pay through increased conciliation agreements and use of sanctions. This is more than the total back pay awarded in the 2 years preceeding consolidation combined. (Appendices III and IV).

In summary, the OFCCP has an enforcement mechanism in place and has begun to use it. The agency has new, effective investigative techniques and a new willingness to invoke sanctions, including show cause notices, administrative complaints, and ultimately debarments. Aspects of this enforcement mechanism, however, raise other issues and problem areas which must be addressed.

CURRENT ISSUES AND RECOMMENDATIONS

Enforcement strategies

Although massive reorganization was a crucial step toward revitalizing the OFCCP, the agency did not adequately guard against bureaucratic and structural changes which unnecessarily impinge on enforcement activity. While agency officials became totally absorbed in staff training and standardization of procedures, enforcement strategies were ignored. Over a year ago, Women Employed formally proposed that OFCCP establish some type of experimental unit(s) which could be structured to utilize expert managers and investigators to test the procedures and standards which were intended to be operational agency-wide only after a number of years. Women Employed also called for the establishment of a strike force approach utilizing OFCCP investigatory staff as well as legal support from the office of the Solicitor of Labor (SOL) in order to concentrate on key enforcement targets. OFCCP delayed the implementation of this recommendation for ten months. In April of this year, at a joint conference between staff from the OFCCP and the SOL, a strikeforce approach to enforcement was adopted. Each of the ten OFCCP regions is now working with SOL legal staff on at least two major enforcement cases to be put on a "fast track" for conciliation or litigation. On a continuing basis, legal experts and investigators are to team up on development of cases to be reviewed by a joint OFCCP-SOL committee. This approach must be firmly established to achieve strong enforcement results agency-wide. It is imperative that SOL staff be involved in the OFCCP enforcement efforts throughout the process in order to avoid a "bottleneck" of cases in the Solicitor's office which are referred for legal advice, review or action from the OFCCP investigators.

The strike force approach would also impact upon the uneven performance occurring in different regions. Each region should be performing according to relative size vis-a-vis the overall program. For example, Region V, with headquarters in Chicago, is responsible for 25 per cent of all federal contractors but receives approximately 20 per cent of total OFCCP resources. Yet its performance record in many instances demonstrates a much greater contribution to overall enforcement. (Appendices V and VI) In the second quarter of the current fiscal year, Region V undertook one third of all the compliance reviews and issued 43 per cent of the administrative complaints and 35 per cent of the show cause notices. The expertise in Region V should be applied through a special strikeforce in other regions.

Regulatory reform

Overall, the underlying weakness in the OFCCP's performance is its consistent failure to implement needed programs and reforms in a timely manner. Three years ago after years of criticism from client groups, contractors, and congressional committees, OFCCP pledged to undertake vital regulatory reform in order to standardize, streamline and strengthen the Executive Order program. In December, 1979, the OFCCP proposed extensive revisions of the regulations which govern the enforcement of Executive Order 11246, as amended. This long awaited initiative came after an extended process of consultation with representatives of protected classes, federal agencies with EEO responsibility and others, and clearly represents the most important contribution to policy development in the agency. Women Employed strongly supports the majority of the proposed changes. Present procedures are confusing and are not tailored to meet the investigatory and adjudicatory needs of the contract compliance program. Courts have held in some circumstances that the procedures fail to provide due process. Most importantly, the existing enforcement process takes too long to identify and remedy discriminatory practices, and is easily manipulated by recalcitrant contractors to create further delay. The proposed revisions address these problems.

The proposed regulations reflect the process the OFCCP undertook to develop them. The extensive consultation process served a vital role in refining the proposals and ensuring that the perspective of those affected most was included.

The most serious weakness in the proposed regulations is the absence of a requirement that the OFCCP investigate complaints alleging class-wide violations. The Proposal permits the OFCCP to "deter appropriate complaints" to the Equal Employment Opportunity Commission. The only obligation to investigate complaints is imposed for "class or systemic" complaints pending against contractors that are the subject of a compliance review.

There are several important reasons why complaints, expecially class complaints, should be retained and investigated by OFCCP. First, Title VII and the Executive Order provide very different remedies to victims of prohibited discrimination. The possibility of jeopardizing lucrative federal contracts creates a uniquely effective incentive to employers to comply that is not available in a Title VII proceeding. Under Title VII, a finding that a class of employees has been discriminated against unlawfully may result in an injunction or consent agreement forbidding continuation of the unlawful practice, back-pay and seriority awards to the victims of discrimination, and, if ordered by a court, affirmative action to remedy the effects of the discrimination. Obviously, these are different from the debarment remedy available under the Executive Order.

Second, the EEOC cannot handle even its own workload of systemic charges. The present systemic program at EEOC is in its infancy. It is completely unrealistic to assume that the EEOC is or will be able to investigate and prosecute the charges of systemic discrimination that it receives or develops, much less the additional charges that are deferred from the OFCCP. Furthermore, the EEOC's systemic program involves its own mechanism for targetting employers and practices of discrimination. There is no guarantee that the EEOC's targetting criteria are appropriate for a program whose purpose is to ensure that federal contracts are not awarded to companies that engage in unlawful race or sex discrimination. To the contrary—the two programs may well have very different priorities and should complement one another, rather than one in effect absorbing the other.

Third, unlike the Executive Order, Title VII does not require private employers to develop and implement affirmative action programs. A complaint alleging deficiencies in a contractor's affirmative action program (necessarily a systemic violation) would be completely inappropriate for referral to the EEOC. In fact, the EEOC would not even have jurisdiction over such a charge. Even assuming that such complaints would not be deferred (the regulation provides that "OFCCP may defer appropriate complaints"), many complaints that allege discrimination within the purview of Title VII are likely also to charge deficiencies in the required affirmative action plans (and vice versa). It would be a waste of resources for the OFCCP to be required to determine, for every complaint filed, whether the allegations made it "appropriate" for deferral or not.

Finally, the OFCCP's capability for conducting effective and thorough investigations of complaints of systemic discrimination is uniquely enhanced by the unrestricted role of charging parties in developing and investigating class charges. In contrast, Title VII itself and present EEOC charge processing procedures impose confidentiality restrictions on the role of charging parties. These restrictions are not present in the Executive Order investigation process. For example, the required confidentiality of EEOC proceedings reduces the ability of charging parties or a third party on their behalf to marshal evidence, that is in response to an employer's alleged justifications of a discriminatory practice.

The OFCCP's concern for control of its enforcement resources prompted it to propose the complaint processing and deferral mechanism in its present form. However, complaints comprise a very small portion of OFCCP's workload. The OFCCP has not shown that it cannot handle its workload of complaints. The burdensome aspects of dealing with these complaints are vastly outweighed by their importance as sources of information to guide the OFCCP, and as potential remedies for victims of systemic discrimination. The strong remedies available under the Executive Order are not available under Title VII, and the OFCCP cannot, by fiat, destroy the ability of class complainants to pursue those remedies.

In April, 1980, a proposed memorandum of understanding between the EOOC and OFCCP outlined the same notion of complaint deferral by the OFCCP to the EEOC. Over the past year, both prior to and after the publication of the proposed regulations and memorandum of understanding, Women Employed has engaged in direct consultations with both EEOC Chair Norton and OFCCP Director Rougeau; we have received repeated assurances that the final regulations and memorandum of understanding, once adopted, will specify once and for all OFCCP's obligations to investigate the class complaints it receives.

The OFCCP has delayed issuing the revised regulations in final form. The agency has received and analyzed all the public comments it sought, but the program continues to operate based on inferior regulations. The longer it waits, the more OFCCP undermines its own enforcement efforts.

There are two additional policy issues which are critical to the success of the OFCCP. One and a half years ago, OFCCP published a proposal requiring contractors to file an annual affirmative action program summary. In December, 1979, the proposal was published in the form of a final regulation. However, after prolonged public comment and discussion, the agency still has not designed the format for the required AAP summary. This requirement would provide a necessary mechanism for the OFCCP to monitor contractor's performance on affirmative action programs and to select targets for compliance reviews. Similarly, it would provide the public with information on which to base its assessment of the success of the contract compliance program. Yet it does not impose a substantial additional paperwork burden on contractors.

No systematic review of contractors' affirmative action plans is made under present procedures. There is no established mechanism for insuring that a contractor's performance under its affirmative action plan will even be reviewed by the OFCCP. In fact, many contractors never file acceptable affirmative action plans at all. Our experience has been that only after repeated pressure from advocacy groups such as Women Employed have major contractors—for example, banks, insurance agencies, oil companies—been required to file affirmative action programs. The proposed requirement of annual submissions does not along guarantee review of affirmative action programs, but it does impose on contractors a regular assessment of their affirmative action performance, and serves as an additional incentive to comply with affirmative action standards. Further, the requirement provides advocacy groups with needed data to monitor the success of affirmative action programs of employers that, due to resource limitations, the OFCCP would not otherwise review. Essentially, effective evaluation of a contractor's compliance status is impossible under present reporting requirements. The proposed AAP summary is a necessity.

Finally, overall effectiveness of the contract compliance program would be enhanced if the OFCCP regulations were revised to include a new definition of job groups. Job groups, now defined as one or a group of jobs having similar content, wage rates, and opportunities, are used by a contractor to set goals and timetables under affirmative action. The definition now in use has proven inadequate when applied to the organizational characteristics of many industries. In a great number of cases, the job groups are defined so narrowly that they produce goals which are numerically insignificant. In a great many other cases, the definition results in a broad mix of traditional and non-traditional jobs (for example, nurses and engineers) and thereby generates placements which tend to perpetuate discrimination or to otherwise allow for goals which are not meaningful from a qualitative standpoint.

Thus, a more appropriate approach would be establishing job groups by salary/wage increments within EEO-1 categories (professionals, sales, etc.). This would focus attention on the real purpose of goals and timetables—the increased participation of women and minorities in better paying jobs, regardless of organizational structure.

Structure

Another initiative which would greatly enhance the viability of the contract compliance program relates to the lengthy administrative hearing process which is set in motion once an administrative complaint is filed. Current regulations require that all administrative hearings be held before an administrative law judge (ALJ) of the Department of Labor who is designated by the Chief Administrative Law Judge. There are three inherent problems in this system: first, most ALJs are not well versed in EEO law; second, when a substantial case load develops the supply of

ALJ's will be insufficient; third, dependence on the calendar of the ALJ's to schedule a hearing works against expeditious handling of cases.

Except in cases involving purely technical violations which are governed by expedited hearing rules, it is not uncommon for cases to be caught in the hearing process for years. For example, the administrative complaint against Harris Bank was issued in December 1977. The actual hearing did not commence until August 1979. The ALJ heard final arguments in January 1980; his decision still has not been issued. Women Employed strongly recommends that the Department of Labor establish a specialized panel of ALJ's whose sole duty is to hear OFCCP cases.

One measure which is critical to the success of the OFCCP involves the agency's location within the Department of Labor. Since 1965, the OFCCP has been part of the Employment Standards Administration. Thus, OFCCP has a Director who reports to the Assistant Secretary of the ESA. This has meant that the OFCCP is dependent on the individual leadership and priorities of an assistant secretary as well as its own director, and functions with an additional layer of bureaucracy. In addition, ESA's influence in determining the budget, staffing, and program of OFCCP often has negative effects. Moreover, coordination with other federal agencies and/or DOL programs has been severely hampered because the OFCCP Director lacks the same status as peers in other programs, including Chair or General Counsel of the EEOC or Assistant Attorney General for Civil Rights of the Department of Justice.

These problems hamper the performance of an agency which has complete responsibility for a compliance and enforcement program affecting the federal government's total procurement process. All of these facts coupled with the program's enormous staff and budgetary resources logically dictate the reconstitution of OFCCP within DOL as an autonomous Administration under its own Assistant Secretary.

In addition to enabling OFCCP to overcome the above mentioned problems, the elevation of the program would serve as a signal to client groups and contractors alike that the enforcement of EEO carries the same priority with the DOL as Employment and Training, Occupational Safety and Health, and other similar administrations.

In February, 1980, Weldon Rougeau, Director of the OFCCP, agreed to establish a task force of civil rights and women's groups to meet with him on a quarterly basis. Women Employed had suggested this concept because it has been our experience with the EEOC that such a process provides a forum for a valuable exchange of information and ideas between agency and constituency groups. Although Mr. Rougeau has embraced this idea enthusiastically, this task force is just now being formed, seven months later.

Examples of similar negligence abound (see history of strike force proposal above). If OFCCP is to become a truly viable enforcement agency with a serious contract compliance program, it will have to prove it can act with decisiveness and timeliness in matters that strengthen its operation.

The OFCCP must firmly establish an enforcement strategy which encompasses a strikeforce approach and is carried out within a framework of revised regulations. Above all, investigation of class complaints should be a priority of the program. On a structural level, a panel of ALJ's dealing exclusively with OFCCP cases is a necessary element for streamlining the enforcement process. Finally, the OFCCP should be reconstituted as an autonomous Administration within the DOL rather than one of several programs under the ESA.

SUMMARY OF RECOMMENDED OFCCP REFORMS

1. The strike force approach to enforcement utilizing both investigatory and legal staff should be firmly established.

2. Revised regulations should be published immediately. These should include: (a) the stipulation that the OFCCP will retain and investigate the class complaints it receives; (b) the format for an AAP summary to be submitted by contractors annually; (c) the redefinition of job groups according to salary/wage levels.

3. A panel of administrative law judges who specialize in EEO matters should be established within the Department of Labor to hear all OFCCP cases.

4. OFCCP should be reconstituted within the Department of Labor as an autonomous Federal Contract Compliance Administration under an Assistant Secretary.

5. The Director and other agency officals should begin meeting immediately with a task force of civil rights and women's groups concerned with Executive Order enforcement.

ANALYSIS OF ENFORCEMENT BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The focus of this analysis of the EEOC is Title VII enforcement. Women Employed's research on equal pay and age discrimination enforcement is still in progress.

The Equal Employment Opportunity Commission is responsible for enforcing Title VII of the Civil Rights Act of 1964 which forbids discrimination in hiring, pay, promotions, and other terms and conditions of employment in the private and public sectors. In addition, the EEOC enforces the Equal Pay Act and the Age Discrimination in Employment Act, and has responsibility for federal affirmative action planning and Title VII complaint processing and appeals for the federal sector. With a staff of nearly 3800 and a budget of $125 million, the EEOC is the largest of the civil rights enforcement agencies.

In 1977, Eleanor Holmes Norton was appointed by President Carter as the Chair of the EEOC. Norton inherited an agency under attack by the public, by employers, and by the Congress. Women Employed was also highly critical of the agency. Through assisting individuals in filing discrimination charges and filing class charges against several major Chicago corporations, we experienced the frustration of watching cases deteriorate in the backlog, investigations bungled, and class charges ignored. By 1976, we found dealing with the EEOC so unproductive that we stopped filing charges altogether and joined othe civil rights organizations in a suit against the Chicago District Office for failing to carry out its mandate in a timely manner. The major criticisms of the EEOC were the following:

(1) The agency's unwieldy structure was such that responsibility and accountability were diffused through several layers of bureaucracy, often with overlapping functions. Duplication of efforts, counterproductive work, and friction between offices results.

(2) Procedural shortcomings in handling individual charges resulted in a staggering backlog of 130,000 cases.

(3) Less than 35 per cent of EEOC's total budget was allocated to actual investigations.

(4) The systemic charge program was totally inoperable.

Norton herself acknowledged these ills. In Congressional testimony, she described the agency: "Charges were accepted without appropriate examination as to merit or jurisdictional authority. Administrative processing was unnecessarily protracted, and the agency made it difficult to achieve conciliation and early settlement, even when the parties were predisposed. Concomitantly, the backlog had mounted to 130,000 charges, disproportionately diverting resources which could most profitably have been devoted to pattern and practice work. A mistaken organizational division separated the legal and administrative arms of the Commission. The problems of an inadequate charge processing system were compounded by unclear lines of authority and frequent personnel and management turnover at the top of the agency." (Appendix VII).

The major accomplishment under Norton has been a new system for handling individual complaints. In September, 1977, three model offices in Balitmore, Chicago, and Dallas began implementation of rapid charge processing. In 1979, the model office program was expanded nationwide. Currently, the statistics show that 44 per cent of all new charges filed result in some type of settlement, with an average benefit of $3450. This compares to 14 per cent of cases settled with an average of $1400 remedy before Norton's reforms. The settlement rate increases to over 47 per cent if the charge is resolved without having to go through an extended investigation. Case processing takes from 2 to 7 months currently versus a minimum of 2 years previously.

Furthermore, the EEOC has reviewed and closed nearly 57 per cent of all backlogged cases and projects the remaining backlog will be completely eliminated by 1982. (Appendix VIII).

In January, 1979, the EEOC expanded individual charge processing to include class complaints. After continued prodding and pressure from constituency organizations like Women Employed, and Congressional oversight committees, the EEOC implemented the Early Litigation Identification (ELI) Program. ELI is an internal program for identifying class charges of discrimination. The idea is to identify potential cases as early as possible so that litigation-oriented investigation can be conducted. There are three sources for ELI charges: (1) statistical evidence and existing EEOC evidence (EEO-1 Analysis and charges filed). Specific industries may be targeted. (2) individual charges which are expanded due to an issue(s) implying class impact. (3) third party or union charges alleging class harm.

ELI differs from a systemic program in that it concentrates on smaller employers, can be limited in scope of issue, and can be initiated by an individual rather than a Commissioner's charge. To date class charges have been filed against approximately

700 respondents, 10 per cent of the cases have been closed with 41 per cent involving class-wide settlements.

The second major accomplishment under Norton has been the total restructuring of the agency. The agency's redesign has been proven to be the most extensive overhaul of structure and process since the establishment of the EEOC in 1965. The changes include: (1) A rapid charge processing system with emphasis on expanded intake procedures, face-to-face fact finding and settlement; (2) A separate backlog case processing system; (3) Integration of litigation, investigation, and conciliation functions; (4) A management accountability and information system; (5) National training program and standards for staff.

Field reorganization is now complete. Lawyers who previously worked in separate litigation center have been integrated with investigators in district offices. During fiscal year 1979, the EEOC filed 236 lawsuits, 197 or 83 per cent of which resulted in court settlements and consent decrees with backpay and other benefits totaling $9.2 million. There are approximately 1000 cases now pending in U.S. district courts, 785 Title VII cases and 204 Equal Pay and Age Discrimination cases. EEOC has 22 full-service district offices and 27 area offices equipped to receive charges and process those not requiring extended ivestigation.

In addition, new enforcement jurisdictions have been transferred to the EEOC from other federal agencies. In addition to Title VII, EEOC now enforces the Equal Pay Act and the Age Discrimination in Employment Act and has responsibility for federal affirmative action planning and Title VII complaint processing and appeals for the federal sector. On the policy front, the EEOC has definitely taken the lead in promulgating guidelines and regulations for improving enforcement of equal opportunity laws. The agency, although engaged in major structural and operational reform, has eagerly pursued important policy issues. Among others, we now have precedent-setting guidelines on employee selection, "reverse discrimination," pregnancy discrimination, sexual harassment, religious accommodation, and exposure to hazardous substances.

In another positive initiative, Eleanor Holmes Norton set up two years ago an advisory group of women's organizations to meet with her on a quarterly basis. These regular meetings have provided a forum for the EEOC to update groups on enforcement activities and policy initiatives. In turn, women's organizations are able to lay out problem areas and priorities, and recommend changes. There is firsthand exchange of information, ideas and criticisms; the general result has been an increased degree of accountability on the part of agency officials. The EEOC's Office of Interagency Coordination recently set up a similar task force comprised of representatives from women's civil rights, labor and business organizations.

The EEOC has succeeded in implementing substantial structural reorganization and in creating a viable process of handling individual and class complaints of discrimination. However, problems in charge processing still exist, the biggest being the lack of real systemic impact.

CURRENT ISSUES AND RECOMMENDATIONS

Enforcement Strategies

The EEOC defines systemic discrimination charges as broad charges against major employers which are initiated by the Commission itself. Respondents are supposedly chosen by a complex targeting technique which considers various factors such as size, employment opportunities for women and/or minorities, industry growth potential, statistical data available, etc. In addition, discrimination issues must be pervasive, involving hiring, promotion, pay, etc.

The EEOC did not even begin its systemic programs in its field offices until a year ago. Currently, only 100 cases nationwide have been initiated; none have been resolved. Women Employed's years of experience in fighting employment discrimination have shown that if discrimination is ever to be eliminated it must be through broad, comprehensive efforts. Racial and sexual discrimination will not be eliminated one case at a time. While we understood the necessity of placing initial priority on perfecting individual case processing and reducing the backlog, we believe that the time has come to make systemic discrimination a priority. Adequate resources have yet to be invested in the systemic program. The head of the systemic unit has changed so many times in the past few years that there has been virtually no leadership.

Fortunately, the ELI program has provided some mechanisms for affecting discrimination patterns and practices. However, resources for ELI are limited also. It is imperative for the EEOC now to focus its primary energies on making its systemic program operational. This should proceed through achieving enforcement results in cases already developed, by expanding substantially the number of systemic cases, and by expanding the ELI program. Ultimately, EEOC's effectiveness will be judged by its record for successfully challenging the pervasive discriminatory systems that are the cause of individual cases of discrimination.

Data Issues

One of the worst deficiencies which pervades EEOC's operations is its inability to monitor statistically the agency's activities. Computerized data collection and reporting is in place only with regard to the individual charge processing systems at the twenty-two district offices. There is absolutely no way for either the EEOC itself or outside groups to assess the performance of the agency unless it is made accountable for its data. For example, we know that during the six-month period of September 1, 1979, through March 31, 1980, 1115 equal pay cases were received by the EEOC (this includes 195 directed investigations undertaken by the agency without receiving a charge). We also know the number of closures (378) and the dollar amount of both findings and awards made ($1.3 million found for 1100 people and $323,000 restored to 686 people.) We do not know what percentage of cases closed are resulting in remedies or in what period of time charges are being processed. In fact, all these statistics indicate is that the EEOC is processing approximately the same number of equal pay complaints as were processed in the Department of Labor.

Likewise, no instructive statistical information is available to adequately evaluate processing of age discrimination cases, ELI cases, and litigation activity. Although gross statistics provide a picture of greatly improved enforcement performance relative to past administrations, it is imperative that resources be committed to creating a data accountability system for all of the EEOC's operations. For each jurisdiction (Title VII, Age, Pay, etc.) and every program (ELI, systemic, litigation, etc.) data should include the number of cases, types of cases (pregnancy, sexual harassment, etc.), outcomes, settlements, remedy amounts (dollars and persons) and time lapse for processing. This data should be available to the public on a quarterly basis.

Structure

The data issue which is most acute concerns the area offices. There are 27 area offices which are equipped only to conduct intake and factfinding operations; no investigative function takes place except through the district offices. This means no ELI cases are processed in the area offices, no equal pay or age cases can be investigated without calling in the district office, and no systemic work can be handled by area office personnel. Women Employed questions the viability of this structure. Perhaps it would be more feasible to have fewer offices nationwide, with all of them full-service (that is district offices which include legal staff and continuing investigation and conciliation (CIC) units). However, we cannot reach a firm conclusion on this issue, since no data on area office operations exists; their activity reports are simply combined into the district office data. Thus it is impossible to distinguish between the time frame for handling a case in an area office versus a district office. It is impossible to ascertain how many, if any, class action cases are originating in area offices; it is impossible to determine the percentage of cases being closed through rapid charge processing versus the CIC unit in area offices. The EEOC currently has no intention of making this type of breakdown available.

Uneven performance records do characterize the EEOC structure. Examination of the district office figures does, in fact, show discrepancies between enforcement results achieved in the older model offices compared to offices opened last year. District offices which are not connected with area offices, such as Chicago and Denver, show relatively better settlement rates, no-cause rates, and time lapses. Overall, the chances for favorable disposition of a charge once it extends beyond rapid charge processing are very slim. Of all cases settled, only 7 per cent are handled through CIC; nearly 52 per cent of the cases closed in CIC are no-caused. (Appendix IX)

Backlog

One alarming trend does come to light after scrutinizing the statistics. As mentioned previously, the EEOC hopes to eliminate the 130,000 backlogged cases it inherited by 1982. It appears, however, that a new backlog of cases is developing. During the six-month period September 1, 1979, through March 31, 1980, the EEOC received nearly 5300 more cases than it closed. By June 30, 1980, the number of cases received exceeded closings by 7867. If this trend is not checked, the reorganized EEOC will have its own backlog in excess of 10,000 per year. We know for a fact that the volume of age discrimination charges is twice as great as the EEOC had anticipated.

This new backlog is particularly disturbing in light of the agency's explanation for its failure to implement an adequate systemic program. The agency has long contended that its capability to handle systemic discrimination work would expand as soon as resources could be freed from processing backlogged cases. Under the circumstances, the growing new backlog poses a serious threat to systemic activity.

Procedures

Another area of EEOC enforcement which requires constant monitoring concerns protection of the rights of charging parties. First, there seems to be a lack of communication between the EEOC and the charging party. It is not atypical for a party to file a charge and then hear nothing from an investigator until she receives a no-cause finding; it is not uncommon that witnesses are not contacted. Often, a charging party is unable to learn the status of her case at any given point in time. An example:

A woman filed a complaint with the EEOC office in Chicago. EEOC transferred the complaint to the New York office because the woman's employer was headquartered in New York. The charging party received a confirmation letter from a New York investigator stating that the charge had been received and was being investigated. One month later, the woman was fired from her job, so she wrote the New York investigator informing him of her termination. One month after that, the woman called Women Employed because she had not heard anything from New York, not even that her letter informing them of her termination had been received.

Time after time in both individual and third party class charges in which Women Employed has been involved, there has been insufficient contact with the investigator. Charging parties have the right to regular progress reports. The EEOC can only benefit from increased information, witnesses, perspectives, etc. In the case of third party charges, procedures must be developed to insure periodic status reports. All of this can be accomplished without violating confidentiality rules.

In addition, some form of appeal procedure is crucial to protect charging parties who can show they have not been treated fairly by the system. We have been told that an "informal" appeal procedure already exists whereby a charging party can write a letter to the District Director. It is at the discretion of the Director to respond. Unfortunately, this "informal" procedure is not publicized and charging parties do not know it exists. At the very least, charging parties should be told sometime during the rapid charge processing procedures that they can make a specific and defined appeal. EEOC is hoping that a sophisticated internal auditing system will preclude the need for such an appeal procedure. However, as long as the discretion of an individual EEOC employee can have a major bearing on the outcome of a charge, an appeal procedure is essential.

In the ELI program, resources are limited; therefore not all class charges will be chosen for processing. Thus, in this instance also, there is a definite need for an appeal procedure if a class charge is not selected for ELI.

Policy

Finally, we urge the Commission to continue to chart strong policy in new areas. The EEOC must move immediately to issue regulations insuring equal benefits in employer contributions to insurance, pensions, welfare programs and other fringe benefit programs. The agency also faces the challenge of devising a litigation and policy strategy to tackle the issue of pay equity and closing the wage gap between men and women.

In summary, the EEOC has not proven capability to tackly systemic discrimination. Further, it has failed to prevent a new backlog from developing out of the rapid charge processing system. Viability of the area office structure is in question, but it cannot be judged adequately without data accountability which does not yet exist.

Summary of Recommended EEOC Reforms

(1) The EEOC should focus its primary energies on making its systemic program operational, or substantially expanding resources for the ELI program.

(2) A computerized data collection and reporting system covering each jurisdiction and each agency program should be put in place immediately. Data should include the number of cases, types of cases, outcomes, settlements, remedy amounts, and time lapse for processing.

(3) The area office structure should be examined to determine the viability of establishing only district offices which are fully staffed for intake, investigation and litigation;

(4) The new backlog which is developing should be recognized and addressed.

(5) Added measures to protect the rights of charging parties should be implemented.

(a) Charging parties and their representatives should be given periodic status reports during charge processing.

(b) A formal appeal procedure should be developed.

INTERAGENCY COORDINATION

As a result of Executve Order 12067 which gave the EEOC authority to examine and standardize EEO performance government-wide in order to strengthen enforcement and eliminate duplication and conflict, the EEOC established an Office of Interagency Coordination. The importance of agency coordination between the EEOC and OFCCP cannot be underemphasized. Although the structure is sound, we have found the process less than efficient. On various issues, Women Employed itself has intervened between the agencies in an attempt to clarify positions and avoid unnecessary misunderstandings. Careful attention must be paid to coordination in both policy development and enforcement strategies. Secrecy and distrust between the two major EEO agencies will only result in hampered enforcement on both parts.

One immediate step which should be taken is establishment of local interagency taskforces. The one comprised of OFCCP, EEOC and the Illinois Department of Human Rights is a model. In an accountability session with Women Employed in November, 1979, representatives of the EEOC, OFCCP and the state agency agreed to develop coordinated enforcement strategies designed to impact on the widening wage gap between men and women. Until Women Employed brought these agencies together, they had never been in the same room for a discussion of their work. To date, the task force has developed procedures for sharing targeting, compliance review, and complaint information; and worked together in collecting data for systemic cases. Further plans include the linking of state and federal contractors in investigations and the development of investigatory and analytic tools aimed at affecting the wage gap in specific corporations. Women Employed will continue to monitor the progress of this precedent-setting program in Chicago.

CONCLUSION

Through substantial structural reorganization and procedural reforms, both the OFCCP and EEOC have demonstrated significant progress in enforcement of equal employment opportunity requirements. The challenge ahead for these agencies is perhaps as enormous as the ones overcome in the past few years. Both agencies face the task of translating the momentum and commitment which has now been established into institutionalized enforcement activity. There are still several outstanding issues to be resolved, and new obstacles to be overcome.

Today women on the average still earn 59¢ for every $1.00 men earn. This is the framework in which assessments of EEO progress must be made.

A new comprehensive program must be undertaken by employers and government agencies responsible for enforcing equal opportunity laws. That program must have as a fundamental goal closing the wage gap between men and women. For example, the OFCCP and EEOC currently spend nearly $180 million to enforce equal opportunity laws. A measure of their performance must be whether the wage gap between men and women diminishes during a given year. As the agencies develop policies and enforcement mechanisms, they must analyze how these will contribute to closing the wage gap.

However, expanded government efforts will not be sufficient on their own. Individual corporations must analyze the wage gap between male and female employees. They must analyze their salary administration programs, affirmative action plans, and equal opportunity efforts to determine how these will contribute to closing the wage gap in their companies.

Women's and civil rights groups must continue their advocacy work, monitoring, and day-to-day involvement in this process. Women Employed has been involved in monitoring the OFCCP and EEOC for over seven years. Today, the Chicago District EEOC office outperforms all others. OFCCP's Region V (headquartered in Chicago) outperforms all others. These performance records are no coincidence. The consistent monitoring and advocacy which are part of the reason for this effectiveness must be carried on nationwide. To assist in this, the Women Employed Advocates has been established.

The Women Employed Advocates is a national lobbying network of individuals and oragnizations concerned about equal employment opportunity. A quarterly Bulletin provides information about our work on programs designed to improve enforcement of EEO laws and target corporations and industries with patterns and practices of discrimination. Women Employed has also outlined strategies and recommended approaches for making gains for working women. Hundreds of individuals and groups are now working together, through the WE Advocates, to maximize our effectiveness and to make achievement of economic equality a national priority.

This report and its recommendations must now serve as the basis of future advocacy work.

APPENDICES

APPENDIX 1

Job problems: vignettes

A major Chicago bank has retained a consultant to interview and screen handicapped applicants for the bank. The bank has instructed the consultant to hire only the most visibly handicapped persons who will be content with clerical or low-level positions. The bank wants the new handicapped employees to have a high public visibility, but does not want to worry about promoting them.

A woman worked for a company in a secretarial/administrative aide position. One of the directors of the company asked the woman to dinner on two separate occasions. She refused both invitations. Some weeks later, the woman accidentally walked into a hotel room at a convention and discovered the same director in bed with another woman. Although the woman told no one about the incident, the director became extremely paranoid about the discovery and demanded that she be fired from the company. The woman's immediate supervisor refused to fire her because she was an excellent employee. The vice-president of the company terminated her because her work was "slipping." The president of the board of directors then circulated a letter to the board announcing that the woman had resigned from the company.

An advertising agency with billings of over $70 million a year has a small branch office in Chicago. One of the male vice-presidents at this branch office decided that whenever the receptionist was sick or on vacation the rest of the women in the office, regardless of job title, would have to take turns filling in at the reception desk. The woman art director took exception to this decision because no comparable men were required to help. After protesting on two separate occasions, the woman was abruptly fired. When she asked for the reason for her termination, she was told there did not have to be any reason given.

A local bank adopted a new policy that required all the women employees to wear uniforms. The bank agreed to pay for the first $175 of the cost of the uniforms. In addition, the women had to sign a letter stipulating that if they quit their jobs at the bank before one year was up, they would have to reimburse the bank for the cost of the uniforms. There is not a uniform requirement for the male employees. The bank made it clear that if the women did not wear uniforms, they would not have jobs.

The only woman on an auditing staff discovered that she would not get a promotion because the comptroller decided that he did not like her. Her qualifications are better than two men they have hired at a higher grade than she presently works at. She did not receive a review after 6 months, which is company policy, but was reviewed after 15 months at which time she was told that she would not be promoted. This particular company has seventy branches nationwide, and all of the branch managers are white males.

A woman applied for a job as a paramedic with a suburban fire department. She is the only woman licensed as a paramedic in Illinois. The suburb, upon learning that she had applied, decided to hire a testing firm to give agility tests to the paramedic applicants, although this procedure had never been followed before.

A suburban bank fired a woman officer who told the president of the bank that she was pregnant, but intended to work right up to delivery and to return soon after. Two days later, the bank fired a woman who had just been hired part-time when she revealed that she was pregnant.

A young woman applied for a job with a major Chicago bank. She was interested in their management training program. Having survived the initial pre-screening, the woman was invited to the bank for a full day of interviews with various bank personnel. At lunchtime, the woman was introduced to a bank employee and told to ask any personal questions. She was assured the conversation was not part of the interviewing process and would be strictly "off the record." Over lunch, the bank employee asked the applicant questions about her personal life, *e.g.*, do you have a boyfriend, are you thinking of getting married, how do you feel about having children, etc.? The applicant answered the questions affirmatively before it became apparent that the conversation was in fact very much a part of the hiring process. Prior to lunch, the applicant was told her qualifications and chances for getting the job were exceptional. At the end of the day, she was told that she would not be offered the position.

A woman applied for a job as a fire fighter with a small suburban fire department. She had previously served as volunteer fire fighter for another city. The woman received a letter from the Fire Chief stating that the department had no accommodations for a woman at this time, so they could not hire her.

A woman sales representative for a cosmetics company was propositioned by her sales manager who also made overt physical advances to her. One week after the incident, the woman was informed that her job was on the line because her productivity was down. Then the company stopped communicating with her. Their office is in New York. The woman finally wrote a letter to the president detailing the harassment and the subsequent retaliation by the manager. One week later the woman was notified of her termination.

A Chicago affiliate of a major blue collar union has not hired a single female or minority in the past five years. During a routine compliance review, this information was transmitted to the Office of Federal Contract Compliance Programs. No action against the union was ever taken.

A national union provides standard subsidies to locals for their staff members, and the locals supplement the salary. A woman was hired in a position traditionally held by men, but the salary was lowered because she was a woman. She filed a discrimination charge with the EEOC, which upheld the charge, finding the local affiliate guilty of discrimination in establishing 2 separate pay scales. However, the charge was then buried in administrative red tape and was never followed up. The case was not resolved even though the EEOC initially found in her favor. Numerous promises were made by the EEOC to the woman over several months, but no action resulted. Meanwhile, the woman was informed by the local that her contract would not be renewed. The EEOC failed to inform her of her right to file a retaliation charge if her employer took action against her for filing a discrimination charge. It has also been discovered that other women throughout the country employed in local affiliates of this union are being denied equal pay under the same circumstances.

In 1974, Women Employed filed charges against Harris Trust and Savings Bank. What has now become a multi-million dollar discrimination case was heard in a formal hearing which commenced in August, 1979, and was completed in early 1980. The decision by a Department of Labor administrative law judge is imminent.

The case involves discrimination in hiring, training, job placement, salary levels and rates of promotion. In general, women and minorities at Harris have remained in departments and job classifications that are lower paying and offer fewer opportunities for advancement than their white male counterparts have. An extensive study of salary levels comparing men and women, minorities and non-minorities with comparable tenure, education and experience revealed substantial income disparities. For the years 1974 through 1977, for example, women and minorities earned a total of approximately $12 million less than their white male counterparts.

The Harris case will set a precedent for the entire banking industry. It is the first in which the government has sought to bar a bank from serving as a depository for federal accounts on the basis of its discriminatory employment practices. It is the first time that the government has sought back wages for an affected class of bank employees.

And yet, complaints of discriminatory employment practices at Harris Bank continue to be received by both Women Employed and the government agencies. Specific cases of racial discrimination in promotion, unequal pay, and blatant illegal action against pregnant women are now being investigated.

Last fall, Women Employed began studying the employment profiles of four major oil companies—Amoco, Natural Gas Pipeline, Shell, and Standard. Data for oil facilities of these companies located in Chicago revealed that 70.5 per cent of the women employed are in clerical positions while only 3.6 per cent are in technical jobs and only 2.7 per cent are managers. As a result of Women Employed findings, OFCCP has now conducted compliance reviews of all these oil companies. Investigators have found that most lack current affirmative action plans. The oil industry in Region V (Chicago) will continue to be targeted by OFCCP during fiscal year 1981. At issue in these companies are general affirmative action deficiencies, unacceptable goals and timetables, findings of affected classes owed back wages, and other violations of the Executive Order. (Appendix II)

Appendix II

Oil companies with Federal contracts in the downtown Chicago area employ 4973 people of whom 1722, 34.6 percent, are women, and 509, 10.2 percent, are minority women.

FEDERAL CONTRACTORS IN THE OIL INDUSTRY IN THE DOWNTOWN CHICAGO AREA COMPARED TO ALL DOWNTOWN CONTRACTORS

[In percent]

	Oil	All downtown contractors
Females:		
Managers	2.7	7.0
Professionals	21.0	17.2
Technical	3.6	4.8
Clerical	70.5	65.7
Sales and other	2.2	5.3
Total employment	100.0	100.0
Minority females:		
Managers	2.6	4.2
Professionals	9.8	10.0
Technical	3.9	4.8
Clerical	80.2	76.9
Sales and other	3.5	4.1
Total employment	100.0	100.0

Source: Employment data from EEO-1 forms, 1978; 136 downtown facilities, 9 facilities from Amoco, Natural Gas Pipeline and Standard Oil.

FEDERAL CONTRACTORS IN THE OIL INDUSTRY CHICAGO AREA EMPLOYMENT PROFILE—1978

	Persons employed				
	All oil	Amoco	Natural gas pipeline	Shell	Standard
Total Employment	7,226	3,356	692	127	3,051
Women	1,973	675	168	74	1,056
Percent of total	27.3	20.1	24.3	58.3	34.6
Minority women	575	169	58	13	338
Percent of total	8.0	5.0	8.4	10.0	11.1
Occupation of females—in percent:					
Managers	2.3	1.3	3.6	1.4	3.0
Professionals	19.2	12.9	20.2	1.4	24.2
Technical	5.8	11.4	1.8	0	3.3
Clerical	69.6	72.9	73.8	97.2	64.8
Sales and other	3.1	1.5	.6	0	4.7
Total employment	100.0	100.0	100.0	100.0	100.0
Occupation of minority females—in percent:					
Managers	2.3	1.2	3.4	0	2.7
Professionals	10.8	5.9	24.1	0	11.2
Technical	4.9	7.1	1.7	0	4.4
Clerical	79.2	85.2	70.8	100.0	76.9
Sales and other	2.8	.6	0	0	4.8
Total employment	100.0	100.0	100.0	100.0	100.0

Source: Employment data from EEO-1 forms, 1978.

OFCCP—NATIONAL

[Fiscal year 1980]

	Quarter—				Fiscal year total
	1	2	3	4	
Total compliance reviews	600	672			
Pre-Award	194	157			
Percent of total	32	23			

OFCCP—NATIONAL—Continued

[Fiscal year 1980]

	Quarter— 1	2	3	4	Fiscal year total
Other	406	515			
Percent of total	68	77			
Construction	116	127			
Percent of total	19	19			
Other	484	545			
Percent of total	81	81			
Back pay in dollars	6,182,389	1,276,669			
Number of persons	2048	1074			
Dollars per person	3,019	1,189			
Debarments:					
Total since 1965			24		
Total since 1977			12		
Administrative complaints	3	7			
Show cause notices	82	99			
Service/supply	74	92			
Construction	8	7			
Conciliations	461	522			
Affected class cases	79	60			

APPENDIX IV

OFCCP—NATIONAL FISCAL YEAR COMPARISONS

	Quarter 1976	1977	1978	1979
Total compliance reviews		16,000	8,792	2,410
Pre-award				1,032
Percent of total				43
Other				1,378
Percent of total				57
Construction				501
Percent of total				21
Other				1,909
Percent of total				79
Back pay in dollars		5,400,000	1,900,000	3,744,207
Number of persons		4,548	2,608	2,160
Dollars per person		1,187	729	1,733
Debarments:				
Total since 1965				21
Total since 1977				9
Administrative complaints	3	6	11	35
Show cause notices	1,355	400	408	225
Service/supply				216
Construction				9
Conciliations				652
Affected class cases				165

APPENDIX V

OFCCP—REGION V AS A PERCENT OF TOTAL

[Fiscal year 1980]

	Quarter				Fiscal year total
	1	2	3	4	
Total compliance reviews (percent)	24	33			
Pre-award	27	38			
Other					
Construction	13	28			
Other					
Back pay in dollars	13	26			
Number of persons	24	67			
Dollars per person					
Debarments:					
Total since 1965					
Total since 1977					
Administrative complaints	33.3	43			
Show cause notices	25	35			
Service supply	25	35			
Construction	50	43			
Conciliations	22	28			
Affected class cases	18	18			

APPENDIX VI

OFCCP—REGION V

[Fiscal year 1980]

	Quarter				Fiscal year total
	1	2	3	4	
Total compliance reviews	146	219			
Pre-award	53	59			
Percent of total	36	2			
Other	93	160			
Percent of total	64	73			
Contstruction	15	35			
Percent of total	10	16			
Other	131	184			
Percent of total	90	84			
Back pay in dollars	8,128	327,221			
Number of persons	5	716			
Dollars per person	1,626	457			
Debarments:					
Total since 1965					
Total since 1977					
Administrative complaints	1	3			
Show cause notices	19	35			
Service supply	18	32			
Construction	1	3			
Conciliations	102	147			
Affected class cases	13	11			

APPENDIX VII

RECOMMENDATIONS FOR EEOC REFORM*—JULY 1977

The EEOC must take specific action steps immediately to restore the credibility of the agency. Based on Women Employed's own experiences, we believe the following changes are particularly necessary: *(1) improved methods for charge intake and pre-investigative analysis must be implemented; *(2) investigative procedures must be standardized, and intensive training conducted for intake technicians and investigators; *(3) a formula for prioritizing charges should be established; (4) charging parties must be given written notification at regular intervals regarding action being taken on their charge, what the next step will be, and relevant timetable; *(5) methods must be developed for expediting the procedural, nonanalytical steps in the investigative process, and time limits should be set on completion of each stage of the process; *(6) a team approach should be used in the District Office for intake, pre-investigative, investigative, conciliation and litigation processes; *(7) a study should be undertaken to determine what is a reasonable case load for an investigator, and performance standards should be devised; *(8) new charges should be separated from old charges, and investigated simultaneously by separate units in the District Office; *(9) individual charges should be separated from class action charges and handled by separate units in the District Office; and consideration should be given to prioritizing class action charges; *(10) District Offices should work closely with civil rights and women's groups in developing class action charges and pattern and practice investigations; *(11) guidelines should be developed and training provided for handling of class action charges and pattern and practice investigations in the District Offices; *(12) the Litigation Centers should be merged into the District Offices thereby integrating the litigative and investigative functions; *(13) the Regional Offices should be abolished with their resources allocated to the District Offices for investigative purposes; *(14) greater budget allocation should go toward investigative functions, particularly systemic work; (15) EEOC should be given cease and desist power.

APPENDIX VIII

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ENFORCEMENT STATISTICS

	Pre-Carter	Sept 1, 1979 June 30, 1980
Settlement rate (percent)	14.0	44.0
Through RCP[1] (percent)		47.6
No-cause rate (percent)	39.0	28.9
Average benefit (dollars)	1400	3450
Time lapse (months)	24	2-7
Backlog	130,000	56,000

[1] Rapid charge processing.

EEOC PERFORMANCE STATISTICS

[Oct 1, 1979 March 31, 1980]

	Nationwide	Model Offices			New offices		
		Baltimore[3]	Chicago[4]	Dallas[5]	Denver[4]	Milwaukee[6]	New York[7]
Settlement rate (percent)	44.0	49.3	53.9	45.0	33.8	27.7	32.7
Through RCP[1]	93.0	95.7	83.7	98.8	98.7	81.5	93.4
Through CIC[2]	7.0	4.3	16.3	1.2	1.3	18.5	6.6
No-cause rate	28.9	24.8	29.1	30.0	26.3	51.6	37.8
RCP closures—percent of total	85.9	90.2	74.5	97.8	90.7	62.1	83.6
Percent settled	47.6	52.3	60.6	45.4	36.8	36.3	36.5
Percent no-caused	25.1	21.2	21.0	29.8	24.5	41.0	36.7
CIC closures—percent of total	14.1	9.8	25.5	2.2	9.3	37.9	16.4
Percent settled	21.9	21.5	34.4	25.0	4.7	13.5	13.2

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*Denotes recommendation implemented under Chair Eleanor Holmes Norton.

EEOC PERFORMANCE STATISTICS—Continued

[Oct 1, 1979—March 31, 1980]

	Nationwide	Model Offices			New offices		
		Baltimore[3]	Chicago[4]	Dallas[5]	Denver[4]	Milwaukee[6]	New York[7]
Percent no-caused	51.9	58.5	52.7	39.3	44.2	69.1	43.4
Average benefit (dollars)	3,450	3,600	2,800	2,800	2,000	3,550	5,400
Time lapse (months)	2-7	2-11	⅔-8	1-9	3-8	1½-8	½-8
RCP	2-5	2-5	⅔-4	3-7	3-6	1½-4½	2-8
CIC	5-7	4-11	1½-8	1-9	5-8	2-8	½-6

[1] Rapid charge processing
[2] Continued investigation and conciliation
[3] Includes Richmond, Va. and Washington, D.C. area offices
[4] District office only, no area offices
[5] Includes El Paso, Tex. and Oklahoma City area offices
[6] Includes Minneapolis, Minn. area office
[7] Includes Boston, Mass.; Newark, N.J., and Buffalo, N.Y. area offices

Mr. HAWKINS. Miss Kreiter, would you care to add anything at this point?

Ms. KRETIER. Not at this point, but during the questioning, thank you.

Mr. HAWKINS. All right.

The next witness is Betty Willhoite. I think you have a statement that you wish to file.

Ms. WILLHOITE. I have copies, yes.

STATEMENT OF BETTY WILLHOITE, PRESIDENT, LEAGUE OF WOMEN VOTERS OF CHICAGO

Ms. WILLHOITE. I am Betty Willhoite, president of the League of Women Voters of Chicago. We welcome this opportunity to underscore the testimony of our national president, Ruth Hinerfeld, before the Subcommittee on Employment Opportunities on July 29, 1981.

She reviewed the league's commitment to affirmative action on behalf of minorities and women. It is an effort that has made use of all available tools: full-scale suits, amicus briefs, monitoring, recommendations, and above all, lobbying to hold the line against erosion of affirmative action enforcement.

Within the past 2 months the league has written to Secretary of Labor Donovan and Budget Director Stockman in strong opposition to changes in Executive Order 11246—changes which seriously compromise Federal support for equal employment.

The league's review—and this bothered us—of comments on new policies are very much hampered by lack of access to administration proposals. Congress and concerned citizens are shut out of the executive process, a mode of operating by this administration that signals action by fiat with citizen comment a useless exercise after the fact. We are really worried about that.

Furthermore, we are mindful of worsening wage differentials between black and white families, particularly during the last decade, a drop for blacks from 61 to 57 percent of the income for white families, coupled with the fact that job segregation results in severe underrepresentation of minorities and women in higher paying jobs. Seventy-eight percent of all officials and managers in private industry are white males. These are conditions demanding eternal vigilance. When applied as mandated, the effectiveness of affirmative action is evident in the gains of black workers in white collar occupations and access for women to nontraditional careers, as my colleagues have so eloquently testified.

The league is not deterred by the arguments that redress measures are in reality quotas or are too costly for today's unsettled economy. We point to the continuing need for the assembling of concrete steps to remedy lack of equal opportunity. Indeed, they correspond to the use of goals considered by business to be an indispensable management tool. The cost argument has been exploded by studies which show the price of affirmative action is only 0.01 percent of gross revenues.

What especially concerns the Chicago League now is the high correlation between the Reagan budget cuts and regression on the equal opportunity front. Economist Andrew Brimmer noted that well paid black workers are disproportionately employed by the Government. Future public sector shrinkage will widen the racial economic gap. Black workers were 33 percent of the participants in CETA public service jobs, a program that increasingly linked people needing jobs with work that needed doing.

Chicago has lost at least 200,000 private sector jobs during the last decade. Add the abrupt loss of 10,000 CETA jobs, and note that the minority youth unemployment rate did not budge in an otherwise slightly better employment report for July.

Reagan officials themselves acknowledge that unemployment is expected to rise before supply side economics really takes hold. A dubious premise.

Leonard Silk, *New York Times* financial editor, repeatedly points out fundamental similarities between the Reagan program and Mrs. Thatcher's England, a warning that applies to cuts in programs, including affirmative action, that make a vital difference to those who are left out of the economic mainstream.

We are struck by the conclusion of Richard Hardy's doctoral thesis at the University of Iowa, which was for every 1-percent increase in unemployment, there is a 2.2-percent decline in income equality, because seniority and hiring practices tend to leave out the black male, the black female, and the white female.

We commend to your attention in particular all the issues of the Chicago Reporter, the journal which pursues and records the current status of discrimination and counter-acting efforts. Their data on families trapped in poverty—especially female-headed families, as eloquently pointed out this morning—and recently, the return of sweatshop labor—form the basis for the corrective measures available in vigorous affirmative action.

Finally, we reiterate the comments of our president, Ruth Hinerfeld, when she said:

> "Senator Hatch believes that the Constitution should be color-blind. We believe that it is, but that people are not. And until sex and race discrimination are eliminated in this country, affirmative action will be necessary to assist those persons whose merits are not recognized in the absence of such measures."

Thank you very much.

Mr. **Hawkins**. Thank you, Miss Wilhoite.

Miss Baum, do you have any questions?

Ms. **Baum**. No questions.

Mr. **Hawkins**. Mr. Washington?

Mr. **Washington**. Thank you, Mr. Chairman.

My first question is to Miss Wertz. I am particularly interested in the combined effect of race and sex discrimination as it affects minority communities. Many minority women work and very often this is because they have to support their families or to supplement the income of their husbands. In these situations the man's wages are likely to be lower because of the effects of racial discrimination. So the woman is more likely to have to work.

And then her wages are, in turn, reduced because of race as well as sex discrimination. So it seems to me the minority communities are doubly affected by both race and sex discrimination, that many black women and minority women especially find themselves in sort of a double bind. I don't think enough people appreciate the impact or really the existence of that kind of a double whammy.

Would you comment on that, Miss Wertz?

Ms. **Wertz**. There definitely is a double whammy with minority families. Right now, the families receive less money, and the barriers that are being put up for minorities at the present time are put up by society to keep the families down.

All I can really say is I agree with what you have said.

Mr. **Washington**. Would other members of the panel care to respond? I think Miss Willhoite touched on this point.

Ms. **Piercy**. Let me just make a brief comment. In the paper we submitted to you I think the point is not only well taken but is one that we are concerned about the stability of the American family, presumably at least in part we are. The current administration claims to be so concerned and I think they are far from showing that kind of concern.

I think it is important to note that black women earn on the average 54 cents for every dollar that white men earn. We have an earnings gap between black and white, and then we have an earnings gap between black females and white males. It makes it doubly difficult.

In addition, where we have women who are supporting their families and when we have unemployment rates that impact so much greater on black males in the community, and we have a woman's earnings as being the only and sole source of support for the family, then we have a tremendous difficulty especially impacting on black women, with the effects of race and sex discrimination. Black women can't get hired and they can't get promoted, and when they do get hired, they get relegated to the very lowest paying jobs.

Mr. **Washington**. Miss Piercy, let me ask you another question.

On page 3 you state that the allegation on the part of the Reagan administration that these regulations are burdensome is not true. Would you expand on that?

Ms. **Piercy**. Yes, I would be delighted to, because that is one of the catch phrases that we are hearing a great deal now, this question of burdensome. I think we have to look at who's creating the burden.

In Women Employed we have been advocating for a long time, along with a number of other groups, an affirmative action summary that would be basically a piece of paper on which employers would provide a summary of what their current employment situation is, their breakdowns by sex, and by race, so that you could see very readily what is going on.

What we have seen is affirmative action submissions that sometimes are literally hundreds of pages long that include advertisements that are filed in the Chicago Defender or the Chicago Sun Times or the Chicago Tribune or whatever, or we have seen pages and pages of pronouncements of equal opportunity policy. In fact, there is very little that talks about the specific work force composition now and what you're going to do to deal with the problems and deficiencies. So I think we have to look at who has produced the paperwork.

I might add a little historical perspective here. Women Employed started in 1973 and at that time this paperwork burden argument in terms of affirmative action did not really exist. Indeed, when we began looking at companies' affirmative action plans, most of them were relatively straightforward. The work force was right there and it was the basis on which we filed many of our original charges against many notable companies—Kraft Foods, CNA Insurance, Sears & Roebuck, and numerous banks. It was really only after it was so clear that it was so easy for groups like ours to delineate very quickly what was really going on that all of this massive amount of paperwork started being submitted to the Government in response to inquiries about affirmative action plans.

Now, there is no question that paperwork burdens ought to be eliminated. We are certainly for that. We want the enforcement dollars going to enforcement. I think the argument about burdens is about 95-percent specious at this point in time.

Mr. WASHINGTON. In terms of the Reagan alternative proposals, Mr. Donovan's proposals, is there any good anywhere in any of those proposals?

Ms. PIERCY. I would like to call upon Nancy Kreiter, research director for Women Employed, who has been involved with these issues in quite some depth, to respond to that question.

Ms. KREITER. Unequivocally, I don't think there is any good in these regulations, and I think what we are seeing is an admission on the part of contractors in this country that the OFCCP finally got some enforcement mechanisms in place and finally started enforcing the law, and there is a threat to these contractors to either obey the law or suffer the remedies.

So what we have seen in the Reagan administration is the business community lobbying very hard right after the election to simply do away with the regulations that have become effective. It isn't because they're duplicative; it isn't because they're inconsistent. It is, in fact, because they are working.

Mr. WASHINGTON. You have no problems with the present procedures for backpay, or do you think they should be revised?

Ms. KREITER. On the question of backpay, the only problem we have is in enforcing backpay. The problems we have seen already in the Reagan administration is a retreat from enforcing the backpay regulations that today are on the books and that they have not withdrawn yet. We know that the OFCCP has called for a moratorium on backpay; former Solicitor Clauss has already testified about two cases where they refuse to participate in backpay settlements. We know right here in Chicago a major affected class of employees has been found at Bell Federal & Savings and the OFCCP has been directed not to go after that relief at this time. Our problems with backpay are lack of enforcement.

We certainly think that there can be streamlining, that we can decrease some of the paper burdens. We think the Carter regs that were proposed were a right step in that direction. That came after many years of consultation—4 years to be exact—where all sorts of creative proposals were put forward and we would like to see those go ahead.

I would say that in terms of anything good, I think that not only in the Carter regs but in things that weren't incorporated in the Carter regs, that there were a lot of ideas put forward by both constituent groups and I must say were discussed during the Carter administration seriously by the contractor groups. They have all seemed to retreat pretty quickly since Reagan was elected——

Mr. WASHINGTON. Are you suggesting that the so-called midnight regulations were not midnight regulations, that there was input from business and from the affected interest groups?

Ms. KREITER. Mr. Washington, that is absolutely the truth. Those regulations were so far from being midnight. Those regulations were mandated in 1976 after this subcommittee and other congressional subcommittees told OFCCP to streamline, strengthen, and standardize their regulations. Contractors were complaining. Our groups were complaining. They undertook 3 to 4 years of regulatory reform which consisted of consulting with Federal EEO agencies, with client groups, with the contractors themselves, and we sat around tables with Labor officials and the contractors and their attorneys at that table, coming to consensus about many points there were then published.

I would also like to point out that those Carter regulations were published in December 1979. They were around for a year. The contractors knew that, and they were put through in final form in December 1980. The Reagan administration had to undertake an extraordinary step to stay those regulations. It was not part of this Executive order on all regulations. They moved forward to do away with those in a special action. I think this can only be interpreted as a major retraction in civil rights and a recognition that this was a threat to really achieving equal opportunity and the contractors having to buckle under.

Mr. WASHINGTON. Well, you couldn't make it more emphatic than that. But what you're really saying is that there was adequate input from all interested groups over a 3-year span pursuant to the promulgation of those orders?

Ms. KREITER. Yes; in direct contradiction to what has gone on with the present proposals.

Mr. WASHINGTON. Thank you.

One final question, Miss Piercy, in reference to the *Harris* case. Are you suggesting that the Government has altered its position because of the pressures from the Reagan administration in reference to that case?

Ms. PIERCY. First of all, there is no question the Government has altered its position in general on enforcement. That is the first aspect of this.

The second is that in the *Harris Bank* case specifically, it is now before Secretary of Labor Raymond Donovan. All of the final briefs in that case will be submitted by the end of this month. The Secretary of Labor must then make a decision on that case.

The *Harris Bank* case demonstrates the necessity of enforcement, and I think the big problem here is that the contractors simply don't want to have to pay the price for discrimination. I think that is purely and simply what we're dealing with here.

In the *Harris Bank* case the American Bankers Association says, "Well, let's redo all the regulations; let's get rid of backpay and let's get rid of all these requirements, and then let's rule on the *Harris Bank* case," when we're sitting here knowing that Administrative Law Judge Rhea Burrow has said Harris Bank owes $12.2 million in back wages for race and sex discrimination. We think it is time that kind of enforcement action goes forward, and it is also one of the key examples of why the regulatory reform proposals that are currently underway are a disaster.

Do you want to add anything, Nancy?

Ms. KREITER. I would just like to add, that our fear in the *Harris Bank* case is that policy is being decided and changed before this decision is being upheld. But I would like to point out that I think that is what is happening in the Reagan administration, a tendency to politicize equal employment enforcement in general in a way that raises both legal and ethical issues for the first time in this country in this arena. I would like to give two examples that are not in the OFCCP but that are occurring in the EEOC.

First, the rumored nomination for General Counsel at the EEOC is Michael Connolly from General Motors. I would like to point out for those who don't know that General Motors is engaged in major and extensive litigation with the EEOC, and has been for a number of years.

The second thing is that we have heard many reports of blatant attempts of new personality at EEOC who intervene in pending litigation—I mean, an illegal step—invoking the names of either influential legislators or administrative officials themselves saying they are taking a particular interest in cases——

Mr. WASHINGTON. None present.

Ms. KREITER. Right, none present. [Laughter.]

This is really a serious matter, both raising legalities and, as I said, ethical issues that are devastating to have to deal with at this point in time.

Mr. WASHINGTON. One last question on cost effectiveness. Do you want to comment on that?

Ms. KREITER. Many witnesses have said, and I think it has been said in all the comments, that what affirmative action is costing this country in terms of outlays out of the pockets of contractors is just fractional, marginal. What it is costing this country in untapped resources and inefficient use of business resources is much larger. I think that's just a specious argument that has become one of the catch-words of this administration.

Mr. WASHINGTON. But it must be met, it must be met.

Ms. KREITER. It must be met.

I also think the administration has a responsibility to meet it on their own terms. Let me call to your attention that in the present regulations there have been no impact analyses offered as to the disparate impact on women and minorities employment opportunities by cutting the thresholds of those covered. Nor is there an industry impact, on how many small businesses would be impacted, or in what regions—the administration has produced none of these types of cost impacts themselves.

Mr. WASHINGTON. Miss Clauss indicated that perhaps some concession should be made to smaller businesses. She didn't embellish it; she said she would forward us the information.

Do you have any brief comments on that?

Ms. PIERCY. I think there is no question that the issue of small business needs to be addressed directly, but I would suggest that we ought to start by looking at the regulations that were due to go into effect in the beginning of 1981. Those regulations, in fact, would have reduced the paperwork burdens on small businesses. The use of an affirmative action plan summary, you know, having a simpler way to file the information that is needed to be filed, is certainly I think one of the key ways we need to look at it.

In addition, there were during the Carter administration any number of proposals under consideration, none adopted, that had to do with the ways in which different kinds of job groups would be reported, so that an employer would be able to do an analysis and would fulfill the reporting requirement according to the ways in which they actually totaled up and profiled their own work force through different kinds of job groups. I think certainly those kinds of proposals are the kind of directions that we need to go into in terms of the future.

I think the real question becomes how do we, in fact, insure that we continue to make any progress at all in the equal opportunity arena and, in addition, how do we prevent the kind of backsliding that we fear already. Our discrimination calls are now up; we are getting more women who are calling us with various kinds of problems having to do with hiring, training, and promotion than we have had in the last 4 years. We have tremendous problems of women who are unemployed, who are trying to find employment and having difficulty in that arena.

So we are talking here about cost effectiveness and we are talking about small businesses. We do have to balance the scales here. Our point is we think they ought to be balanced in light of this country's commitment to economic equality and justice for all citizens and not at the expense of women and minorities.

Mr. WASHINGTON. I want to thank the panel.

I yield whatever time I have left, Mr. Chairman.

Mr. HAWKINS. The basic premise of the new administration is that with economic gains for the Nation, they envision through tax cuts and defense spending, et cetera, that employment opportunities will open up and therefore we don't need title VII and executive orders in order to insure employment for women and minorities. In effect, they envision applicants for jobs in a line and that you have enough economic activities so that those at the rear of the line are going to be employed.

Are any of you witnesses in agreement with that supposition, that new economic beginning?

Ms. WILLHOITE. I would like to comment on that just briefly.

For those at the very bottom, the new proposals make efforts at employment almost impossible, because they have removed incentives for employment or those life support systems which make it possible for people to stay employed. I think even the Reagan administration realizes that as they make it harder and harder for people to choose between welfare and work, that they made a mistake. So that as they tamper with the thirty-and-a-third allowance for people on welfare to work, as they remove food stamps which might make the difference between working and not working, as they cut back on medicaid, all of those things, it could be the margin for people to stay at work. They have made it doubly difficult for people at the very bottom of the economic scale.

Now, to the extent that that, plus cutbacks on day care, title XX, et cetera, is related to opportunity and affirmative action, the whole package just lands very hard on those at the bottom.

Mr. **Hawkins**. Does anyone else care to comment on the question?

Ms. **Kreiter**. I would just like to add that I think one of the things we have seen in the Reagan administration is the total emphasis on hiring, as if that is what affirmative action is all about, and that it stops at hiring.

The problem goes way beyond hiring. Yes, access is a problem. But just as serious, if not more so, is discrimination in training, discrimination in promotion, and discrimination in pay. Hiring says nothing about remedying all those who are victims of past discrimination and will continue to be so until enforcement takes place. It says nothing about getting up the ladder once you're in the job, and it says nothing about giving training to those who need to move on.

Mr. **Hawkins**. If there are no further comments—Mr. Washington?

Mr. **Washington**. I simply wanted to commend the League of Women Voters for its stalwart, tremendous support for the extension of the Voting Rights Act, and your "green thumb" stretches all the way down to Montgomery, Ala., and someone from the league testified—I forget the charming young lady's name—and I want to thank you for that support, Miss Willhoite.

Ms. **Willhoite**. It's a No. 1 priority.

Mr. **Hawkins**. Certainly the committee would like to express appreciation to all of the witnesses. It has been a very excellent panel and certainly the committee appreciates the cooperation of all the organizations represented in the work of the subcommittee. We will certainly continue to lean on you to the extent we can, and we appreciate the input you have had on the direction that this subcommittee has undertaken over the years.

Thank you very much.

Ms. **Piercy**. Thank you, Mr. Chairman.

Mr. **Hawkins**. The next panel will consist of Mr. Charles Hayes, international vice president and director of region 12, United Food and Commercial Workers Union; Miss Alice Peurala, president, local 65, United Steelworkers of America; Mr. James L. Wright, director, region 4, United Auto Workers; and Rev. George E. Riddick of PUSH, who was earlier scheduled but who is now appearing with this panel.

May I take the opportunity to express to you, Mr. Hayes, in particular, my own personal appreciation of your appearance. I think you have been on the battle line longer than I have been in public office. I believe that makes you somewhat almost as old as the senior member of this subcommittee.

Mr. HAYES. Yes; the statistical data on my tenure is fairly accurate.

Mr. HAWKINS. We will call on you first, then.

STATEMENT OF CHARLES HAYES, INTERNATIONAL VICE PRESIDENT AND DIRECTOR, REGION 12, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION

Mr. HAYES. My name is Charles Hayes and I am a resident of Chicago. I serve as international vice president and director of region 12 of the United Food and Commercial Workers International Union, AFL-CIO, and CLC. I am also here as president of the Chicago chapter of the Coalition of Black Trade Unionists.

The importance of this hearing on affirmative action and the enforcement of equal employment opportunity laws cannot be underestimated. For the past 10 years discrimination has been on the rise and even contaminating trade unions which traditionally have been counted on the side of equal justice and equal rights.

Reagan's EEOC transition team made recommendations which, in effect, would nullify the Civil Rights Act of 1964, Executive Order 11246, and other laws and regulations which have been effected to help insure equality in employment. These recommendations have been translated into proposed legislation to eliminate or make ineffectual any methods by which affirmative action progress can be judged or measured in employment.

These include H.R. 742, the affirmative action program conditions resolution; H.R. 313, the Federal grantee and contractor affirmative action guidelines; and Senate Joint Resolution 41, the constitutional amendment on affirmative action.

Moreover, the budget cuts in EEOC would weaken the enforcement of affirmative action regulations now in existence.

While this is going on in the Halls of Congress, affirmative action is on the wane within the trade union movement. The trade union movement was the strongest ally of the civil rights movement as exemplified in the 1960's by its alliance with Dr. Martin Luther King, Jr. We must restore that coalition if we are to resist the assaults against those who have been traditionally on the low end of the economic and social totem pole.

The following are some ways in which we can advance the cause of affirmative action within the trade union movement:

One, end restrictions on admission to apprenticeship programs which are jointly administered by employers and the building trade unions.

Two, stop the denial of journeymen cards to qualified black trade unionists.

Three, we encourage the elevation of blacks and other minorities to policymaking positions, either elective or appointive, within the trade union movement, to strengthen efforts to enforce affirmative action programs.

Despite these deficiencies within the trade union movement, some progress has been made by Supreme Court action in the *Weber-Fulilove* cases which show a strong trade union commitment to enforcement of civil rights and affirmative action. It is quite clear that more court action is needed. Enforcement of affirmative action laws and regulations can only be achieved if there is strong government support for such enforcement, stimulated by a strong people's movement. This is essential during this period when the political climate is so repressive toward minorities, especially with the rise of unemployment creating competition for jobs.

For our Government to retreat at any level only gives encouragement to those who would turn the clock back on all forms of equality. As we view what is happening today in both the public and private sector, where the emphasis is being placed on balancing the budget rather than on spending money to provide employment for people who are out of work, or to provide money to support our education system to prepare people for the kind of jobs that are going to exist in a computerized society, the racial cleavages and differences are going to be heightened.

You can hardly expect, for example, schoolteachers and busdrivers to remain quiet when they are thrown out of work because they were the last hired and the first fired because of seniority rules and regulations. It is ridiculous to understand a public school system such as in Chicago, where the predominant enrollment is black while the majority of teachers and board members will be just the opposite.

If I may digress just a bit, I would like to refer to some history of that section of my own organization with which I am most familiar—the meat packing industry as well as the retail distribution. Jobs are disappearing due to technological changes and industry consolidation. There used to be a time not too many years ago when almost 20,000 people were employed in Chicago's bustling stockyards, and 65 to 75 percent of those jobs were held by blacks. It was our union that took the initiative, through collective bargaining, to force employment of people irrespective of race, creed, color, or sex, and our position was bolstered later by the enactment of the Civil Rights Act in which people were to be integrated into the maintenance departments, processing departments, and yes, a few into the front offices of the stockyards. I am sure this has been true in many other industries.

When those major meat packers left Chicago, many of our former members had to latch on to jobs wherever they could—in hotels, hospitals, and other service areas. Many of these jobs, too, are now disappearing.

Finally, I would like to call for a strong commitment to strengthen laws and regulations, not to eliminate them, in areas of civil and equal rights. To make commissions and committees ineffective due to lack of funds is a miscarriage of justice. Agencies in name only with no means or staff to investigate or issue complaints are apt to be the rule rather than the exception given the course which this administration is pursuing.

I say this fully recognizing that Executive Order 11246, which applies to employers who have Federal contracts, should also apply to unions that discriminate. Just as contractors are subject to affirmative action laws, so should those unions with whom they deal.

I welcome this hearing and especially one which is chaired by such a great leader in the cause of full employment and affirmative action, Congressman Augustus F. [Gus] Hawkins. I am most pleased also to see our own Congressman, Harold Washington, conduct himself in such a brilliant and effective manner in the cause of equal justice and equal rights for all Americans.

Mr. HAWKINS. Thank you, Mr. Hayes.

Next is Mr. James L. Wright.

STATEMENT OF JAMES L. WRIGHT, EXECUTIVE BOARD MEMBER, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

Mr. WRIGHT. Mr. Chairman, I am glad to be before you today, and I am really honored to appear before you to say just a couple of words concerning affirmative action.

My name is James Wright and I am executive board member of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, and director of UAW's region 4 which encompasses Illinois, Iowa, and Nebraska. I appear here today on behalf of some 1.3 million working men and women of the UAW to share with you our views and our concerns and our longstanding commitment to the cause of civil rights and civil liberties and the struggle in which we have been engaged over the past 45 years to provide a better quality of life for the working men and women whom we have the privilege to represent.

We in the UAW perceive affirmative action as that mechanism designed to correct past discrimination at the employment gate, in the personnel offices, in government, as well as in the private sector.

This commitment on the part of our members has been reflected in numerous resolutions adopted over the years at the union's constitutional conventions. For example, at the last convention held June 1-6, 1980, the delegates approved resolutions supporting both civil rights and women's rights. A pertinent part of the civil rights resolution states:

> It will be necessary to accelerate the use of affirmative action programs in order to eliminate the discriminatory practices that have resulted in disproportionately higher percentages of unemployed or under-employed minorities and females.

A further quote:

> The UAW, therefore, supports full and meaningful employment as proposed in the Humphrey-Hawkins law, as a guarantee and right of every person. Affirmative action programs must be pursued to fight all traces of discrimination in employment. Every element of unfair and insensitive treatment of workers must be eradicated. The workplace must be fair for all.

The women's rights resolution further supported affirmative action. Among the specific actions endorsed by the resolution were the following:

> Company policies which curtail or impede the hiring and promotion of minorities and women should be eliminated. Where government contractors are required to follow affirmative action programs, we must see that they are fairly designed and effectively implemented and efforts should be stepped up to encourage affirmative action in the skilled trades, including recruiting, education and training. Restric-

> tions pertaining to apprenticeable skilled trades classifications which deny women workers equal opportunity to enter the skilled trades should be eliminated.

The UAW's mandate from the convention delegates to seek affirmative action in the workplace has been pursued by the union in the courts, in the regulatory agencies, and through collective bargaining. The UAW has also participated in friend of the court briefs in virtually every U.S. Supreme Court case of significance in this area. Our union was party to an amicus curiae brief in support of the Steelworker's skilled trades affirmative action program in *Weber* v. *Kaiser Aluminum Company*. We filed in support of the 10 percent set aside for minority contractors in *Fullilove* v. *Kreps* because of the importance of increasing minority construction business ownership to improving minority representation in the construction trades. The UAW has supported affirmative action in the circuit court of appeals in numerous cases.

A particularly significant one was the *Detroit Police Officers Association* v. *Young*, supporting affirmative action among the Detroit Police Force.

The UAW had defended the integrity of its collective bargaining agreement affirmative action provisions wherever they have come under attack. For example, an affirmative action program provided for entry into the skilled trades apprenticeship program at a ratio of one black for every white under an agreement between International Harvester and the UAW. In a case that presaged the *Weber* decision, the union successfully defended this program against a reverse discrimination attack. You will see that in *Barnett* v. *International Harvester*.

The UAW has supported affirmative action guidelines in testimony before the Office of Federal Contracts Compliance Programs and the Department of Labor on numerous occasions. Indeed, further comments on this topic are now being prepared for submission in connection with the July 14, 1981, notice in the Federal Register 46 P.R. 36213, seeking such statements of position.

Similarly, when the Equal Employment Opportunity Commission has requested comments or testimony on affirmative action related subjects, the UAW has frequently appeared or filed written statements supporting positive steps toward increasing the rate of progress toward equal employment opportunity.

Finally, at the bargaining table the UAW has negotiated a variety of affirmative action-oriented measures. Time and space, of course, permit the mention here of only a few.

In the skilled trades area, several major agricultural implement manufacturers have agreements with the UAW calling for entry into apprenticeship programs on a one-black for one-white ratio, with specific provision for female representation as well.

Another approach taken with a major automotive manufacturer involved altering the apprenticeship selection criteria to remove elements favoring white males and to improve the standing of women and minority applicants, including a vigorous effort aimed at increased recruitment and entry into the program. In all these locations, the efforts have borne fruit: the rate of minority and female participation in the automotive and agricultural implement industries has improved enormously through the past decade, an achievement which not only the UAW but also the employers with which it has negotiated these agreements take great pride.

Without affirmative action, progress toward true equal employment opportunity might well come to a virtual halt, and at a minimum, would be far slower than the level acceptable to our society at large. The UAW urges that this nation's commitment, like that of the UAW's membership, remain steadfast so that we may yet see the day when goals and timetables will become superfluous and unnecessary, because all segments of our society will have their fair share of the desirable employment positions in all sectors of our economy.

No matter how well-intentioned our motives to sustain the gains of affirmative action, the best laid plans will continue to stray until we succeed in getting the economy back on its feet.

We all must be able to share in an economic pie large enough to meet the needs of millions of our fellow Americans, most particularly those who have yet to achieve justice on the job, in both the private and public sectors across America.

Thank you for permitting me to share these observations with you. We of the UAW pledge our commitment to this effort.

Mr. HAWKINS. Thank you, Mr. Wright.

The next witness is Rev. George E. Riddick of PUSH.

STATEMENT OR GEORGE E. RIDDICK, STAFF VICE PRESIDENT OF OPERATION P.U.S.H.

Rev. RIDDICK. Thank you, Congressman Hawkins. I want to express appreciation for your patience and for your willingness to include me even at this late hour, and to express particularly an honor in being able to join the persons whom I have joined on this panel.

What you have in front of you are some notes that I had to put together at the last minute. We have been working, as Congressman Washington knows, on Coca Cola and I'm afraid that's all I can see. However, a statement more detailed and better organized and in much better shape will be in your hands no later than the first of next week. We assure you that what you are doing today is a tremendous service to this Nation.

I am requesting permission to make this brief statement because the issue of affirmative action, far from focusing on promotions and opportunities for a few blacks, nonwhites and women, represents the future economic survival of Black Americans, other nonwhites, and women.

In an October, 1979 hearing before the Joint Economic Committee of the Congress, presided over by Hon. Parren Mitchell, Congressman from Maryland and then chair of the Congressional Black Caucus, Dr. Melvin Humphrey of the Equal Employment Opportunity Commission stated that the tap in income between blacks and whites had widened between 1969 and 1974—the study period that he took—by at least $4.5 billion, from $7.4 billion to $11.9 billion. Upon detailing the correlation between that gap and the utilization of blacks in varied employment categories, Humphrey stated that if the gap continued to grow at its current rate, or to expand in light of a declining economy, his calculations showed that it would reach a full $100 billion by 1985.

Among other factors noted by Humphrey in taking account of the growing disparity between the income of blacks and the income of whites, in that incredible nosedive in income suffered by blacks after 1974, which their income proportionately went down from 62 percent of that of whites to 56 percent, was the realization that at present rates of progress blacks would only reach parity in the officials and managers category in the year 2017. On the other side of the ledger, in the schools there are fewer than 6,000 black medical students now of 65,000 medical students.

No city represents a more convincing case for the need of affirmative action than our own, the city of Chicago. A study by the Chicago Urban League, following up a report published by that agency in 1965, noted that of some 22,000 policymaking positions in the city, blacks had increased their share from 2.7 percent in 1977 to 3.8 percent in 1980. At the same time, the population of blacks in the city had risen from 35 percent to nearly 50 percent, and within the metropolitan Cook County area from 20 to 28 percent.

As the local administrative positions are viewed from this report, the specter of race is even more evident. The Urban League checked those classifications and categories which were "exempt from civil service with salaries of $24,000 and above and all positions in civil service Grade 18 and above with provisional employees."

The league study also included positions classified as special rate, not in pay plan, by the Department of Personnel, as the salaries were at the $24,000 level and above and because they were considered to involve policymaking responsibilities.

In 1977 the metropolitan sanitary district, for instance, disclosed an increase in the number of qualifying policymaking positions from 7 to 15 between 1965 and 1977. At the same time the number of blacks in policymaking groups increased from one to two. In the overall analysis, however, percentagewise this represented a loss of 1 percent. There has been some improvement, but the pattern is still the same.

In Cook County government we similarly show immense disparities, though a few hires here and there would have the cosmetic effect of indicating some progress numerically. The truth is, with the elimination of the Cook County Health and Hospitals Governing Commission, some very substantial losses are apparent. Again, there were 15 departments added to the structure of county government between 1965 and 1977, with not one top black administrator at that time, and with a total gain of blacks of one step or 1 percentage point from 8 to 9 percent.

The league report observed that overall, local administrative gains for blacks were due almost completely to increases in two city entities rather than in the two county metropolitan entities.

Again between 1965 and 1977 the number of Federal civil service policymaking positions increased from 368 to 603, numerically, while blacks, true enough, increased their share at least five times—that is, from about 8 to 42—numerically they did not attain enough to reach 10 percent of the total category. It is doubtful that they represent or will soon represent anywhere near that proportion of Federal decisionmaking employees if things continue the way they are.

The league study showed that even the board of education is making somewhat commendable progress with respect to placement of black policymakers. In 1977, representation of blacks at policymaking levels was 22 percent below its constituency base. I submit that this picture has not substantially changed even with the installation of a black superintendent of education.

This is especially the case in light of recent reductions in staff that have also resulted in reductions in rank for blacks entering policymaking positions at the low end of the seniority scale.

Although few areas are of more strategic importance to minorities than police departments, Chicago's Police Department is still in the throes of litigation over its promotions policy. This committee should know that of nearly 90 exempt rank positions in the department, fewer than 15 are held by blacks. Again, fewer than 35 blacks are at the lieutenant level in the police department.

Similarly, in the Chicago Fire Department, the department has no blacks at the battalion chief level, though there are at least 125 positions at that level, unless a black has been appointed within the last 2 months in a temporary way. They have none.

While there are three blacks above that level, one is presently on disability leave and is expected to retire within the next 6 months. Again, the highest black, a deputy chief, serves as labor relations director but does not have the authority of the personnel director. Accordingly, the department has no blacks at or near the fire commissioner or deputy commissioner level, yet black Americans have served the Chicago Fire Department since the 1870's.

What is more alarming is that there is a strongly worded affirmative action section in the March agreement made between the city and the International Firefighters Union. I think Congressman Washington remembers the work that PUSH did to try to secure an agreement or contract for the firefighters, because we thought they were entitled to it. Reciprocally we thought we were also entitled to a strong affirmative action agreement for blacks and for Spanish-speaking firefighters in the city of Chicago. But it has been virtually ignored.

The question of affirmative action as it pertains to fair employment for women needs more attention. Although the press and many misleading analysts are seeking to use this issue divisively, we must bring clarity to this matter as blacks because it impacts heavily upon us.

The truth is that nearly 41 percent of black families and 20 percent of Spanish-origin families are headed by females. Moreover, 46 percent of the more than $140 billion income earned in the black community, or some $64 billion, is earned by women. In 50 key market cities where at least 66 to 68 percent of our population lives, earning 75 percent of black income, that figure proportionately is even greater. We cannot afford to deny affirmative action to black and other nonwhite women.

What we know about women in this classification is that they are generally younger—with a median age of 42 years as against 48.2 years—and contrary to popular opinion and ignorance, unfortunately, over 60 percent are in the work force. I mean unfortunately the ignorance that is allowed to be unleashed by the press and others that these women simply want welfare, that they're sitting around, they're lazy and not interested in working, but just want to make more babies.

At least 57 percent of the persons we are talking about hold clerical or service occupations, with fewer than one-fifth of them, or 20 percent, having professional positions. What this tells us is that these women claim a disproportionately small share of the economic pie. Median family income for them as of 1978 was $8,540, or less than one-half of the $17,640 median income for all families. For black and Spanish-speaking women, the income levels are an abysmal $5,580 and $5,890 respectively.

If black children are to be sustained rather than strangled, if black Americans are not only to survive but also thrive, we must be assured of the opportunity to provide decent jobs with adequate income and incentives for on-the-job advancement, including educational advancement.

Again, we consider Humphrey-Hawkins as an essential linkage to affirmative action. Given the future of employment and the growing stigma of structural unemployment, something that will be virtually institutionalized in the Reagan tax proposals, because of the bias toward capital-intensive industries, Humphrey-Hawkins is needed and, indeed, mandated by these realities.

Finally, blacks demand a formula based upon reciprocity. The issue for blacks now is the pursuit of self-development and self-determination that encompasses the use of our dollars to insist upon gaining equity and parity in jobs and economic benefits on the demand side of the ledger, and our share of wealth and ownership on the supply side. The supply side of the ledger means that we seek our share of franchise operations and wholesalerships in the private sector and other operations whose markets enjoy $140 billion of black trade.

Our quest is for economic reciprocity, not generosity. We want the larger corporations of this Nation to calculate a black share in the dollars they spend for advertising, for construction, for medical needs, for litigation, for their banking programs, for the maintenance service needs they have, and for their philanthropic gifts. A few donations at banquets and a few blacks in highly visible but largely cosmetic jobs is no longer permissible. We want to see blacks in operational areas where their opportunities are more than optical illusions and where they are on a track to top level management, including the presidencies of these corporations.

Our concern for franchises, distributorships and whole-salerships rests on the simple fact that small business represents at least 56 percent of the Nation's jobs, and 78 percent of its new job opportunities. It is clear that given the current administration's posture, we will have to absorb the economic slack of unemployment in our own neighborhoods. That means we will have to have the means for creating jobs and creating the wealth that will in turn unleash the multiplier effects needed to make our community economically viable.

Congressman Hawkins and Congressman Washington, what I am saying is we are not seeking to get the Government off the hook. But if the administration is going to insist that the private sector must take up this responsibility, then unlike 1929, the private sector has to take seriously its responsibilities. We spend money in the private sector. The private sector needs to calculate on the basis of its dollars what that expenditure means in fair share employment, in fair share distribution of wholesalerships, in fair share distribution of the opportunity to do their litigation as out-of-house counsel, as medical people, as persons who do their contract constructing work, et cetera. We want a formula. Because as 26 million people, we represent, in fact, a Third World nation. We need to be treated as a favored class in this matter because the continuing situation of our economic retardation is a drag on the whole Nation.

Victor Purlow—and I believe you were possibly there at that hearing—noted that perhaps as much as $137 billion is lost relative to the gap between black income, the gap in black jobs, even if we separate the difference between our unemployment and the unemployment of America's majority group. If we deal with the whole question of black business, et cetera, that comes to almost $137 billion.

So, in effect, we feel that cost-effectiveness means talking from this standpoint. We know that industry is not going to do everything. But it needs to be challenged to do much more, and the Federal Government needs to support us and sustain us the very same way it has sustained America's larger industries.

I often quote the fact that at least $5 to $7 billion has been done by America's private industry behind the Iron Curtain. This is rationalized as good business and consistent with détente. The question I must ask is when will our Government establish a relationship of détente with its own American black businesses and with its own black and nonwhite people. That's the question we raise.

From you we need the type of creative legislation that makes discrimination a violation of Sherman and Clayton type provisions on restraint of trade. Specifically, that racial discrimination makes for an action in restraint of trade and is therefore a violation of those laws.

We also need legislation that strengthens the title VII protections and requires more periodic audits to establish compliance for firms hiring 50 or more persons and holding Federal contracts. We cannot afford to allow these provisions to be loosened by increasing the number of those allowed before compliance is required. We may be excluding upwards to 66⅔ percent of the Nation's businesses if this compromise is accepted.

We are asking, Congressman Hawkins, that if you can, that you go back to the drawing boards with regard to legislation that will deal directly with the issue of restraint of trade as a result of discrimination and that we strength our title VII legislation protections on affirmative action.

Thank you very much.

Mr. HAWKINS. Thank you, Reverend Riddick. We will get to questions in a few minutes.

I understand Mrs. Peurala has now appeared and is at the witness table. We will next hear from Mrs. Alice Peurala, President of Local 65, United Steelworkers of America.

STATEMENT OF ALICE PEURALA, PRESIDENT, LOCAL 65, UNITED STEELWORKERS OF AMERICA

Ms. PEURALA. Thank you. I had a contracting-out meeting in my plant so I'm sorry I'm a little late.

I am Alice Peurala, president of Local 65, United Steelworkers of America, representing 5,000 members of the South Works plant of U.S. Steel in Chicago, Ill.

The basic steel industry—U.S. Steel, Armco, Bethlehem Republic, Inland Steel, etc.—entered into a consent decree and affirmative action program negotiated between the Steelworkers Union, the Federal Government, and the basic steel industry on April 12, 1974. This decree provided that minorities would have equal access to the apprenticeship programs in the industry which had all but excluded blacks, Latinos, Hispanics, and women.

Craft jobs in the industry are the highest paying jobs, with the ability to develop skills which are transferable. Today, when many workers are losing jobs due to plant closings and work force reductions, learned craft skills put workers in an advantage to transfer to other plants and even other industries as skilled workers, increasing job security for minority workers.

Prior to 1974 only a handful of minority workers were in craft training positions, and even here they were in the less-desirable crafts—riggers and millwrights. Also, peculiar crafts to heavy industry, which is steel, the electrical field, electronics, machinists, welders, boilermakers, were reserved for white males, with few exceptions.

Women in craft jobs was unheard of—in the fifties and sixties when I requested consideration for an apprenticeship, management thought it was a joke. Never taking seriously the desire of many women who had come to work in the mills during the war years, patriotism, a national emergency, they were told they were lucky they had a job and should not be trying to get jobs which were men's jobs.

Today, after 6 or 7 years of the consent decree, which said that all workers entering trade and craft jobs, that bids must be posted and 50 percent of these awards must be awarded to minorities. It is only because of this quota spelled out by the courts—Judge Pointer in the northern district of Alabama—that today we see in all areas of the South Works plant women welders, machinists, wiremen, electricians, and so on.

Also, a black face or female face no longer requires a second look. You know, that "Do I really see what I'm seeing" look. Minorities had always simply asked to be given opportunities. They have proven in our plant and throughout the basic steel industry that they are qualified when offered the training to do a job, and enjoy the earnings that go with craft status, the best in the industry.

For my generation of worker—I have 28 years service—it is too late to enter apprenticeship, as it has been for many thousands of others, denied equality in the workplace. But it isn't for the generation for young people today. Affirmative action programs are crucial. Minorities have a right, an inalienable right, to expect to move up the ladder of job opportunity as they enter the workplaces around this Nation. Minorities must have something to look forward to, to aspire to, that their fathers and mothers did not, who worked their entire working life in dead end jobs.

Quotas were essential for the steel industry, as voluntary compliance did not work. With the law on our side, and with the affirmative action programs with quotas to enforce the law, we have made gains. We are a long way from our goals, but the quotas have made it possible to progress. We have hope and continual vigilance and enforcement is needed to continue that progress. Any attempt to turn the clock back will only serve to disillusion our young people, not only in terms of workplace equality, but to lose faith in our government, who will make a good law and then take it away before the full impact and results have been implemented.

The Supreme Court in 1978 affirmed our right as a union, the Steelworkers Union, to negotiate affirmative action programs when they ruled for the Steelworkers in the famous *Weber* case. The union had negotiated an affirmative action program with quotas. A white coworker challenged the program, which made it possible for black workers in the plant to seek promotions, where before the company had hired off the street the people to be trained in the crafts.

Fortunately, the Supreme Court agreed with the union, that we had that right to negotiate for our members a program, so that the highest court has given us the green light.

Quotas and affirmative action programs are OK. I would urge this committee to consider seriously the ramifications if in any way there is any curtailment of the progress by rescinding the executive order. It would give heart to those who say they will treat persons equally without the law; we don't need laws. This would put an end to programs. Eventually it would give the enemies of equal opportunity the hope that they could do the same, in steel and many other areas where such programs are in place.

We urge that you do all you can to make sure that we continue to give all Americans equal job opportunity. Do not stop the progress that we have made.

Thank you.

Mr. HAWKINS. Mr. Washington.

Mr. WASHINGTON. Mrs. Peurala, Mr. Wright, Mr. Hayes and Reverend Riddick, your testimony was very powerful.

Mrs. Peurala, you very forcefully stated and repeated several times that you supported affirmative action and quotas. You made that clear.

Ms. PEURALA. Yes, sir.

Mr. WASHINGTON. Would you embellish that, please, because I think a lot of people should hear not only the forcefulness of it, but the rationale for it.

Ms. PEURALA. Well, it is necessary to have the quotas because prior to 1974 in many of the families of crafts—and these are crafts which are lumped together by electrical or mechanical repair-type crafts—there were in most of these crafts no women, very few Hispanics, and practically no blacks except in crafts which were the heaviest, dirtiest types of jobs, which were millwrights and riggers. There were no electronic repairmen, no electricians, no wiremen, maybe a token number of black workers as machinists.

The quota system, which began in 1974, provided that all future openings in any of these crafts would have to be filled by minorities, so that if 10 bids went up for a job, half of them had to be black, Hispanic, and female. It is only with that quota system that we have been able to legally force through court order, for U.S. Steel Corp., to enhance the ability of minority workers in skilled trade and craft jobs.

Prior to that time, the systems which were in place such as the seniority systems, made it very difficult for workers to move around the plant and make themselves available for these jobs.

So that it was a three-pronged agreement, that it was absolutely necessary to have the quotas. Without the quotas we would be back where we were prior to 1974.

Mr. **Washington**. So it is not just a question of redressing old past grievances; it's a question of removing current ongoing discrimination against those protected areas you're speaking of?

Ms. **Peurala**. Yes, sir.

Mr. **Washington**. Thank you.

One other question to the labor panel.

The sum total, I suppose, of Mr. Reagan's alternate proposals on affirmative action really mean voluntarism. Would any of the panel comment on that?

Mr. **Hayes**. Well, the record will show that voluntarism hasn't worked in the past. One cannot assume that an employer, whose main motiviation is based on the motive of profit rather than morality of fairness, is all of a sudden going to change. It's just burying your head in the sand.

I think we just can't assume that voluntarism works. We have to at least have, based on experience, some yardstick by which we can force people to bring about change and do what is right for people.

It is unfortunate, I happen to believe—and I think with some substance—that there is a certain segment of our society which happens to be poor, and too great a number of them happen to be black. They're the expendables in our society. Time will prove this to be right. And unless we begin to establish and enforce the laws, we're going to see the poor black people, and poor white people, are going to be ridden completely out of our society. I think this is by design, not by accident. I think there are certain people now who are in positions of power who count numbers only of those who die who happen to be poor rather than those who come into this world.

Mr. **Washington**. In terms of the——

Reverend **Riddick**. Could I comment on that?

I wholeheartedly agree with Mr. Hayes' comment. I think it is interesting that with regard to the colleges and universities—and, of course, we have a very paramount concern about the black colleges and universities—that the estimates made by the Chronicle on Higher Education is that as a result of the budget cuts, the gap that exists at present could only be filled if corporate America were to increase its contributions 144 percent. There is no evidence at all that they intend to make a compensatory response relative to their contributions.

The other thing I want to say again is that, back to our old issue with reference to the matter of reciprocity, we know that the agreements that we are trying to make, while having the capital

"V" voluntarism attached to it, since we don't have the Federal Government's hands assisting us in enforcing them, we know that in a real sense they don't result from any voluntary actions because industry has the capacity, research and all the data that it needs to make the changes that it wishes to make. What it results from is their desire to get the dollars. They know that when dollars are withdrawn, you see, they feel it.

All we say in the process, of course, is that if we have that ability to fight with our dollars, plus some very strong legislation that is needed relative to title VII provisions, and relative to the question of restraint of trade—and I might say that that exists for all groups that are minorities, including those that are treated as minorities, namely, women who enter business or are attempting to enter business—the same factor is true, that we need that kind of legislation.

We will enter a competitive field now without even the equipment to compete, as increasingly our economy becomes more devastating.

Mr. WASHINGTON. I would like to note for the panel that this attack on affirmative action regulations coming from the Reagan administration is not isolated; there is an attack on so-called business regulations across the board, environmental regulations, and regulations designed to protect the American worker in the workshop. In short, OSHA is under violent attack, and I suppose you all know that. I don't think we can separate that attack from the affirmative action attack——

Mr. HAYES. The unions themselves are under the most violent attack by this administration, as witness what is going on today.

Mr. WASHINGTON. Right. So I gather that your criticism of your own union structure in a sense is designed to awaken American unions to the fact that they can't afford an attack in any of these areas; am I correct?

Mr. HAYES. The age-old adage that laboring white skin cannot consider himself or herself free so long as laboring black skin is held in bondage.

Mr. WASHINGTON. Mr. Wright?

Mr. WRIGHT. Furthermore, the unions have to clean up their act. We're not saints, not by any stroke of the imagination. We have things to do in our unions and we're supposed to do them.

We have been talking here today about affirmative action and about what the unions are doing, but it is a struggle and we have to continue to fight, because you still have the whole setup of the parents and actually two societies in this country that haven't been changed yet. In the house of labor where we are, we still have our big fight going. We still have to work on these things.

Mr. WASHINGTON. One last question.

Some critics of affirmative action have claimed that these programs create pressures for upgrading minorities and women who are already working for the company, but they do little to create opportunities for minorities and women on the entry level.

I don't understand that criticism, but I wonder what your experience is and do you agree with that comment.

Ms. PEURALA. No, I don't, because our consent decree affirmative action program included hiring people into entry level jobs and hiring people into the plant. There was a 50-percent quota. If they needed 20 laborers in the blast furnace, they weren't going to be all 20 black laborers; they had to be 50-percent black and 50-percent white.

By the same token, in the rolling mills, where the big money is to be made and the big production is made, for instance, in our bean rolling mill, instead of 20 white laborers going into the entry level jobs, it was 10 white and 10 minorities, women, so that the opportunity to move into higher paying production jobs was also afforded to blacks, where in the past the hiring office shunted minorities into areas like the foundries and the blast furnaces rather than the areas where you could move up into production jobs which were higher paying and even more semiskilled jobs.

So our affirmative action program has addressed that problem, and it is working very effectively. It also gives an opportunity, when jobs are posted around the plant, if a worker wants to move from the blast furnace to another area of the plant, his plant seniority gives him the opportunity to move, but the affirmative action program also requires a quota there. So it is not only the apprenticeship training programs that we have quotas for; we have quotas throughout the plant in hiring, transferring, all the way down the line. So it has increased the opportunities not only in the appenticeship and the skilled craft training programs, but throughout the plant.

Reverend RIDDICK. Congressman Washington, what we found sometimes—I think that Sister Peurala has described it also—is, of course, good negotiation and the insistence upon a fair scale relative to even the design of the consent decree. When you have sensitive lawyers and sensitive union leaders there, you have it.

We have seen on occasion, however, in terms of our experience with private companies, that we negotiate with that they will take the easiest way they can, which means there isn't the sensitivity at the entry level. When you look at the question, for example, of the number of minorities and women in some of the semiskilled, skilled, and unskilled areas, you will find nevertheless that concentration, of blacks and nonwhites at the bottom. There has been no attempt to try to assess the skills of the person in terms of them getting in at the semiskilled or the lower end of the skill level so that they would be on a track toward top-level skilled categories and classifications of employment.

So you have to watch it. You get two responses, distinct responses, and why it is important to try to get the best possible agreements, and of course to have the kind of guarantees in legislation that prevent them from stooping to this kind of pencil sharpening.

Mr. WASHINGTON. So there is some truth to the criticism then. Affirmative action has not always and in every place——

Reverend RIDDICK. You know, it's not the fault of affirmative action——

Mr. WASHINGTON. I understand that.

Reverend RIDDICK. It's the fault of the type of agreements that the industries will "euchre" you into making.

Mr. WASHINGTON. So it hasn't across the board operated as a suction in terms of not only upward mobility within a plant, but also in bringing people in on the entry level.

I also want to make clear that the goals that Ms. Peurala refers to were agreed upon to settle claims arising from past discrimination—isn't that correct?

Ms. PEURALA. Right.

Mr. WASHINGTON [continuing]. But also voluntary goals and timetables are under attack through various mechanisms, being proffered by the Congress and by this administration. So even if it got to the question of voluntarism, I'm afraid even in that area we would also be running afoul of a trend which seems to be emanating from this particular administration.

I have no further questions, Mr. Chairman.

Mr. HAWKINS. Our thanks to the panel. It was very excellent testimony.

Our next witnesses on a panel will be Owen C. Johnson, Jr., vice president, Continental Bank, and Mr. Alexander Robinson, deputy director, Chicago United. Mr. Johnson and Mr. Robinson, please be seated at the witness table.

The Chair would like to express to you, on your participation in the seminar that this subcommittee has been sponsoring on the reauthorization of CETA, my understanding is that you have certainly contributed a very valuable point of view. We appreciate this dialog that this subcommittee and the full committee have had in reaching out to the business community. Certainly I think this goes a long way in removing some of the criticism that I and others have been listening to. We certainly, want to express the appreciation of the subcommittee for that participation.

With that preliminary, we will now call on you to make your statement as you so desire.

Mr. JOHNSON. Chairman Hawkins, may I ask that Mr. Robinson go first. What I am going to say really follows on some of the points he is going to make.

Mr. HAWKINS. All right.

STATEMENT OF ALEXANDER ROBINSON, DEPUTY DIRECTOR, CHICAGO UNITED

Mr. ROBINSON. Thank you very much, Chairman Hawkins. I appreciate this opportunity on behalf of Chicago United to appear before this Subcommittee on Employment Opportunities.

My comments and testimony will have more to do with the business economic development aspects of Chicago United as it relates to minorities, and the ultimate result and impact on the economy for jobs and economic development, rather than affirmative action. So my comments will not deal specifically with any legislation or Executive Order No. 11246 as amended.

Chicago United is a consortium of leading black, white, and Latino business executives and professional people dedicated to the improvement of the socioeconomic environment of the Chicago metropolitan area. The organization's goal is to improve the social, racial, and economic environment of the city of Chicago and to insure the increasing participation of all citizens in Chicago's economic activity.

There are 46 members of Chicago United. I want to make that point very clear, that I am speaking only for Chicago United and the 46 corporations, organizations, represented in our consortium.

Chicago United's approach to problem-solving is unique, for it is a private organization working without the benefit of governmental assistance. The chief resources drawn upon by the organization are the business knowledge and expertise of its members and their companies. Their skills are utilized in an effort to improve the chances for equal economic opportunity for all.

Chicago United bases its work on the premise that opportunities should not be denied to anybody on the basis of minority status. The minority business development task force of Chicago United focuses on providing equal business opportunities for minority firms. The organization of Chicago United operates through a network of task forces. We have six of them in jobs, economic development, housing, minority business development, education, et cetera, and they are all comprised of leading chief executive officers of our members. This minority business development task force focuses on comparable majority firms but who have not had the same opportunity of minority firms of access to business. Chicago United's strategy is to recitfy this inequity so that minority firms may compete fairly.

Minority firms are introduced to major corporations through Chicago United. From these introductions, it is hoped that business relationships will develop as the minority firms are given the chance to prove their capabilities.

We have done this through quota or set-aside programs for our private sector corporations to involve minorities, and it has been a successful program.

This strategy is a traditional marketing approach that has been applied by Chicago United in five areas: banking, construction, insurance, professional services, and purchasing—that is, the Chicago Regional Purchasing Council, which is comprised of largely Chicago United companies and several others. Minority firms in all five areas have been assisted with significant results:

For example, the business placed by Chicago United-Chicago Regional Purchasing Council firms with minority financial institutions last year rose by more than 10 percent.

In addition to that, the overall purchasing activity of Chicago United and CRPC companies last year exceeded over $114 million with minority vendors and suppliers in the local Chicago area and over $410 million nationally.

In the construction area, Chicago United hosts many meetings of the majority construction contractors involved with minority construction contractors and corporate construction users in activities that have resulted in specific contracts that have alleviated the problems of bonding, cash flow situations with minority contractors.

In the insurance area, the total dollar premiums paid to minority insurers and brokers increased by 23.97 percent, from $3.9 million to $4.8 million in 1980.

Contracts were awarded to minority firms in the areas of accounting, legal services, personnel, and architectural and engineering by majority firms. This is an area where we found there is not a lot of work being done in, and for the first time professional firms are actually participating and making an impact where there is some leadership involving development in professional areas rather than nonprofessional type areas of janitorial, maintenance, and lower level type services.

We developed a minority contractors directory and a compendium of minority professional service firms and they were published and received widespread distribution and serve as model programs throughout the country for the private and public sector. Chicago United has developed a "How to Guide" for minority banking and it has become a nationwide model, proving that Chicago United is widely respected for its endeavors in minority business development. I have to reiterate here that we are only talking about 46 corporations, based in the Chicago area, and 23 minority/23 majority. So our impact has been great, but as far as corporations and Fortune 500 corporations, we're talking about a limited few.

Besides assisting minority firms in securing business opportunities, Chicago United is aiding the growth of existing firms and encouraging the development of new businesses. A seminar was conducted recently for successful minority businessmen in order to solicit their recommendations on how majority firms can best be of assistance. Chicago United is also completing a study on the feasibility of supporting the establishment of a minority owned and operated property and casualty insurance company.

This would be of interest to this committee, in that there are no such organizations like that in the United States. The capitalization requirements, our goal will be $10 million, and will impact significantly on nontraditional areas of development for minorities in the P. & C. industry, as well as opportunities for bonding and surety for minority contractors.

Chicago United's jobs task force is also working to help those who are economically and socially disadvantaged. The Chicago Alliance of Business Employment and Training [CABET], was formed to address the problem of minority unemployment in Chicago. Working with Chicago United and the jobs task force, CABET has developed a number of creative programs to place disadvantaged minorities in jobs with member companies and other firms outside of Chicago United. These programs have been so successful that they have attracted national attention and have been widely duplicated. Most importantly, they produce results, bringing many young minorities into the workforce for the first time. Mr. Johnson, who has been heavily involved with CABET, will address this more fully.

Chicago United has been voluntarily working to achieve affirmative action objectives in the private sector. Its goals parallel those of Federal statutes prohibiting discrimination on the basis of race, color, religion, national origin, or sex. Equal opportunity is to be achieved for all, ending biases that have traditionally disadvantaged certain groups of people both socially and economically.

Chicago United's approach toward the equalization of opportunity is, indeed, novel. It is a business approach by businessmen, using business skills. With the possibility of President Reagan weakening Federal affirmative action statutes, it may also be the approach for the future in the private sector.

The business sector is assuming increasing societal responsibilities and will continue to do so as Government removes itself from many spheres of activity. Businessmen will have to pick up where Government officials leave off. Programs similar to Chicago United will become more commonplace as businessmen see the need to organize themselves into productive units. The private sector will be the arena for much of what was previously considered public domain.

Thank you.

Mr. **Hawkins**. Thank you, Mr. Robinson.

Mr. Johnson?

STATEMENT OF OWEN C. JOHNSON, JR., VICE PRESIDENT, CONTINENTAL BANK

Mr. **Johnson**. Chairman Hawkins, Congressman Washington, I appreciate this opportunity to speak on such an important issue.

My name is Owen Johnson and I have personnel responsibility at Continental Bank here in Chicago. I also have several years experience on the board of directors of the Chicago Alliance of Business, an organization that works to provide on-the-job training opportunities for the economically disadvantaged in our city.

As we face a significant reduction in CETA funding, I think it is time to look at alternative methods of dealing with structural unemployment and employment and training opportunities for the economically disadvantaged generally, and women and minority specifically. We need to re-evaluate the overall goal of the OFCCP and think about the best way to accomplish it.

I believe their objective should be to increase employment opportunities for women and minorities, not law enforcement. Law enforcement is the EEOC's function. An alternative to today's behavior would be for OFCCP to target contractors for contract compliance review based upon female and minority representation by some form of job categorization within industry and region on a worst first basis. Then, an incremental audit approach should be used to minimize needless paper exchange. They can start with a minimal information request and gradually increase the volume of data requested based upon the contractor's fact situation. Once targeted for review, the process should not bog down arguing over the size of the outside pool of minorities or females for a specific job category. The company should be given some flexibility in proposing where they can increase employment opportunities for women and minorities. Their affirmative action program can take on several forms, including:

First, participation in programs designed to increase female representation in nontraditional jobs. For example, the Chicago Alliance of Business helped to sponsor the startup of a local program run by the Midwest Women's Center, designed to train women to be auto mechanics. I would like to see more programs like this to prepare women for high demand, nontraditionally female occupations that have real job openings.

Second, participation in private sector on-the-job training programs that are CETA funded, like those offered through the Chicago Alliance of Business. These programs focus on the economically disadvantaged people which happen to have a disproportionately high minority representation in this city.

Third, participation in innovative programs like Training, Inc. here in Chicago, which provide economically disadvantaged people with a simulated work experience that prepares them for real life work. Continental Bank has been one of the largest employers of their graduates over the last several years.

Fourth, development of upgrading programs such as skill training. Continental Bank offers everything from spelling, punctuation, grammar, typing, and other training programs to allow entry level staff an opportunity for advancement which then opens up more job slots for the economically disadvantaged or the structurally unemployed at the entry level.

Fifth, development of special training programs for nonbusiness college graduates. At Continental Bank, we have developed a curriculum in connection with a local university to teach our employees finance, economics, ,and accounting. This program is for nonbusiness BA's, a group that has significantly higher female and minority representation than is typically found among business graduates. These people are trained to become commercial or international bankers, the highest status position within our organization.

Sixth, support of special scholarship or intern programs to increase the minority or female pool which can be considered for jobs that have low minority or female representation. Continental Bank has long participated in programs like inroads, which is an internship program that provides summer employment for inner-city minorities enrolled in Chicago area colleges. Since its inception, we have sponsored 53 individuals through this particular program.

Seventh, development of programs to increase handicapped representation rates.

Eighth, participation in special work study programs like office occupations. Continental has operated the largest such program in Illinois for several years. This program is in conjunction with the Chicago Board of Education, and we provide city high school youth with part-time jobs while they are going to school, often enabling them to complete school by relieving financial pressures that their families are feeling, and concurrently providing the student an opportunity to apply what they learn in school. These students receive class credit for their work experience. Typically in our case, more than 80 percent of our students are minority and we provide 150 to over 200 students with jobs each year.

I am trying to emphasize several different examples of programs to illustrate the many options that should be open to a company. Let the company do what they can do best in making a contribution to solving the total employment problem.

None of what I am saying is meant to get companies off the hook in providing equal employment. I am not suggesting that any company should pass an OFCCP compliance review by hiring economically disadvantaged while denying protected class access to middle management jobs, or vice versa. That would be unlawful. But that is not an issue that should bog the OFCCP down.

The EEOC, not the OFCCP, insures nondiscrimination among all employers, including Government contactors. Present and future efforts to increase employment opportunities for protected class members should be the only equal employment criteria for obtaining a Government contract, the only nonbusiness criteria. This proposed approach gives OFCCP a unique opportunity to get out of the business of policing contractors and seeking relief for past discrimination along with all of the duplicative jurisdictional problems with EEOC.

OFCCP can go beyond law enforcement to stimulate affirmative development of new opportunities for women, minorities, and handicapped. Retrospective relief, affected class analysis, and applicant flow adverse impact analysis do not increase female and minority job opportunities. They are law enforcement actions which mean punishment for doing something wrong in the past. That is the EEOC's job.

OFCCP, on the other hand, is positioned to provide the only positive reinforcement for accomplishing the objective of the Executive order. They can accelerate increased employment opportunities for women, minorities, and handicapped, but they cannot do that with a retrospective focus. They must look forward and encourage company cooperation to develop positive programs. OFCCP can flexibly measure progress on a company-to-company basis by looking at the number of protected class hires and promotions where opportunities exist.

These companies, without new opportunities, can support scholarship or other programs aimed at improving educational or skill levels which will build a better future work force for them and others. OFCCP's total performance can be evaluated, and should be evaluated, by looking at the change in aggregate employment opportunities for women and minorities by job category, not by looking at backpay totals.

That is the end of my formal testimony, but I want to add that I have given Mr. Anthony Gibbs a copy of a document that was prepared by the Equal Employment Advisory Council which documents the EEO-1 changes, minority and female work force participation changes, from 1966 through 1979. The focus of this document illustrates that when OFCCP changed its basic approach and took on more of a law enforcement activity in the early seventies, that there really has been no change in the increase in minority or female representation by EEO-1 category due to this changed approach. The trend line, in other words, from 1966 through 1979 was relatively unaffected by the activities of OFCCP in recent years.

Thank you.

Mr. HAWKINS. Thank you, Mr. Johnson.

We are deeply appreciative of your creative suggestions as regards your training programs. Are you suggesting these should supplement or replace the existing affirmative action requirements? I am not so sure just where they fit in. Are they in addition to or are they in place of the affirmative action process?

Mr. JOHNSON. I think that affirmative action means employment and training programs—in other words, increased opportunities for both women and minority group members. These are realized through training programs that allow a contractor or a company to take people in at the front end, or to upgrade their current work force which will open up new job opportunities at the entry level.

Mr. HAWKINS. Yes; but would you agree that the current laws with respect to affirmative action, for example, should be strengthened or replace or, let's say, disregarded, so long as the private sector has the opportunity to do a lot of the things which are very commendable that you indicated. I'm not so sure just where it fits in.

Mr. JOHNSON. Well, I am not looking to reduce the private sector's responsibility to engage in the concept of affirmative action. What I am suggesting, rather, is that the Government, OFCCP in this case, I think has an opportunity to encourage and reinforce company participation in training and employment programs that do expand opportunities.

From OFCCP's perspective, I would assume the criteria for obtaining a Government contract would be participation in programs that do just that, expand minority and female employment opportunities, or to upgrade their opportunities within the company.

Mr. HAWKINS. So you're really not suggesting any basic change in the current situation, but more involvement in the private sector?

Mr. JOHNSON. It's a change in focus. The contract compliance review has come to mean back pay analyses, affected class analyses, applicant flow analyses, things like that, rather than OFCCP asking the contractor: "You have underutilization; there are fewer minorities in these job categories than would be expected based upon outside availability. What are you going to do about that? What are you going to do to increase minority representation? What have you been doing to increase minority representation?" Rather than looking at the law enforcement functions which from my perspective belong with EEOC dealing with the back pay, for past discrimination, remedying past discrimination.

Mr. HAWKINS. Well, let's get away from your particular company all together now and go to *x* company operating in a highly discriminatory manner and refusing to comply with the objectives of the Executive order or title VII.

What do you do with that company? Do you ignore any part of the private sector that is unwilling to do the things that are the objective of this entire program. Don't you in a sense need someone to oversee the program? We have a 55-mile-an-hour speed limit, but we still have to have speed cops to enforce it, or everybody won't comply with it, particularly here in Chicago on some of these freeways that I have been on. [Laughter.]

Are you going to just allow them to plow into each other? Who is to oversee this? I quite agree with the ideal situations that you express, but who do you hold accountable? I don't know who it is in the private sector that we hold accountable for seeing that these splendid training programs or employment opportunities are created if the Federal Government withdraws as it apparently is doing under this administration.

Mr. JOHNSON. Chairman Hawkins, what I am suggesting is not a withdrawal from enforcement of equal opportunity law. In fact, what I am thinking of relates to organizational development within a private sector company. For example, two banks operating in the same geographic region may have very different success rates, and it has to do with the organization's structure. What I am talking about here has to do with organizational structure.

If OFCCP has the responsibility to expand minority and female employment opportunities, I think in the case of the highly discriminatory employer that you describe, OFCCP's challenge to that employer would be: "You have a low minority representation rate. We want an accounting for what you're going to do to change that. Only if you have a program that will change that to our satisfaction will you receive a Government contract."

Now, as to the prior discrimination that you're describing, that existed in this particular company, I am suggesting that OFCCP, when they become embroiled in correcting the problems of the past, are getting into what I would say the EEOC's function should be. The EEOC, on a cooperative basis, should be looking at that particular employer and dealing with the violations of the law that have occurred in the past, which would include remedial action, including back pay.

Mr. **Hawkins**. So you are expressing a very strong preference for the EEOC enforcement approach. In view of the fact that both the EEOC and OFCCP have the mandates to seek voluntary and nonenforcement kinds of compliance, I don't quite understand your strong preference, let us say, for the EEOC type approach as compared with OFCCP, except that my impression is you're saying their approach is more along the line of a law enforcement approach rather than working cooperatively or seeking voluntary enforcement of compliance as opposed to the other.

Is that the distinction, or do I make that distinction in what you said?

Mr. **Johnson**. I think it is a correct distinction. I am looking at the EEOC as a law enforcement agency which relies primarily on punishment for past wrongdoing, just as the speeder on the Dan Ryan receives a traffic citation from our local police. Whereas in the OFCCP case——

Mr. **Hawkins**. Or at least the threat of them coming along side of you.

Mr. **Johnson**. But I think OFCCP, however, has an opportunity to be in a different mode. I am not preaching voluntarism. I don't think you can remove the threat of coercion from OFCCP. I believe that OFCCP legitimately needs to rely upon coercion. However, that coercion should come in the form of mandating present and future behavioral change as opposed to correcting problems from the past.

Now, admittedly, if there is low representation and OFCCP is seeking either a training program or a new employment program with that particular company, they are, in effect, correcting problems of the past. But they are not dealing overtly with violations of the law. They are asking that company, "We want you to do something special to see to it that minorities and women are given employment opportunities in this company that has had a poor record in the past."

Now, the something different is going to be a program the company will commit to at the present time to change their future behavior in order to obtain that Government contract. And certainly, if they don't adhere to the program they are committing to, OFCCP is going to be back at their door threatening debarment if they haven't changed their behavior once they have made the commitment.

Mr. HAWKINS. You indicated some study that had been made on OFCCP. Do you wish to submit that for the record?

Mr. JOHNSON. Yes, I do. I have one copy with Mr. Gibbs.

Mr. HAWKINS. All right. Without objection, that study will be included in the record.

[The information referred to above follows:]

AN ANALYSIS OF THE COST OF OFCCP'S COMPLIANCE ACTIVITIES AND ITS IMPACT, AS MEASURED BY NATIONAL EEO-1 FORMS

Equal Employment Advisory Council

SECTION I

THE COST OF THE FEDERAL CONTRACT COMPLIANCE PROGRAM

I. Survey of Federal Contractors

To establish an approximation of the annual costs of complying with federal EEO requirements in general and OFCCP's regulations in particular, a survey was taken of 21 companies selected on a representative basis from the Fortune 500 listing. The results of the survey are as follows:

A.	Annual Cost of all EEO Requirements to the Fortune 500		$1.5 billion
B.	Annual Cost of the Contract Compliance Program to the Fortune 500		$942 million
	1. Annual Cost to the Top 50:	$459 mill.	
	2. Annual Cost to the Top 100:	$601 mill.	
	3. Annual Cost to the Top 300:	$773 mill.	
C.	Projected Annual Cost to all 325,000 Federal Contractors. (Since an unknown number of federal contractors are subdivisions of larger corporations, 50,000 contractors were arbitrarily not included to compensate for the possibility of double counting.)		$1.15 billion
	1. Annual Cost to the Top 500 Federal Contractors*	$942 mill.	
	2. Annual Cost to the Top 501-1000 Federal Contractors (assuming an average expenditure of $55,000)*	$27.5 mill.	

3. Annual Cost to the Top 1001-50,000 Federal Contractors (assuming an average expenditure of $2,000)* $98 mill.

4. Annual Cost to the Middle 124,000 (assuming an average expenditure of $500)* $77 mill.

5. Annual Cost to the Bottom 100,000 (assuming an average expenditure of $100)* $10 mill.

D. Average Annual Number of Compliance Reviews for the Fortune 500 - 2.4. This figure would mean that 46% of all the compliance reviews conducted by OFCCP in a given year probably involve Fortune 500 companies. In 1980, one company had 49 of its approximately 100 facilities reviewed.

Average Number for the Top 50	21
Average Number for 51-100	3
Average Number for 101-100	1
Average Number for 301-500	.5

E. Average Cost of a Compliance Review to a Fortune 500 Federal Contractor $20,283.00

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* This assumed expenditure would cover such cost as the preparation of all affirmative action plans, the maintenance of necessary employee records, advertising and notice costs caused by regulation, staff time for internal monitoring and responding to agency data requests, work environment alterations to accommodate the handicapped, related legal and consultant fees, and overhead.

II. OFCCP Activities in Fiscal Year 1980 (most recent year for which actual numbers exist)

These figures were based upon OFCCP's FY 1982 budget justification, which stated that in 1981, 80% of its budget was spent on compliance reviews and the remaining 20% on complaint investigations.

A.	Annual Budget	$51 mill.
B.	Number of Employees	1,482
C.	Number of Compliance Actions	4,358
	1. Individual complaint investigations1/	1,736
	2. Number of compliance reviews2/	2,632

1/ An individual complaint investigation simply refers to those investigations initiated by the filing of an individual complaint. They usually are limited to specific employment practices and individual problems, but they may allege class violations. Moreover, OFCCP has the discretion to expand an individual complaint into a broad-based review of the contractor.

2/ Such reviews are initiated by the agency and generally involve an examination of all of the contractor's employment practices.

D. Cost of Compliance Actions

1.	Average cost of a complaint investigation	$5,875
2.	Average cost of a compliance review	15,500

E. Effectiveness of Compliance Actions

1. The agency stated it found actual discrimination in 113 of its compliance reviews or only 4%. It believes that there is a possiblity of discrimination in another 467 or 18%. Thus, in 2,632 compliance reviews initiated by OFCCP in 1980, it found or believes it will find discrimination in 580 or 22%.

2.	Total amount be spent by the government on compliance reviews in which there was no finding of discrimination	$31.8 mill.
3.	Estimated amount spent by federal contractors on these reviews.	$41.6 mill.
4.	Total amount spent on compliance reviews in which there was no finding of discrimination.	$73.4 mill.
5.	Percentage of contractors reviewed, assuming each review involved a different contractor.	0.8%

F. Effectiveness of Individual Complaint Investigations

1.	Average cost per investigation to OFCCP	$5,875
2.	Average Cost of similar investigation by EEOC (based on EEOC's 1982 budget estimate)	$2,000

SECTION II

MINORITY & FEMALE PARTICIPATION RATES IN THE CIVILIAN LABOR FORCE (1966-1979)

The following 18 charts reflect the national participation rates of minorities and women in the nine categories used by the Equal Employment Opportunity Commission to segment the civilian labor force. The charts are based on data reported by the Commission in its annual summary of all employers filing EEO-1 forms. Any employer with more than 100 employees must annually file such a form, according to Title VII of the 1964 Civil Rights Act. It is estimated that approximately 50,000 employers are involved in this program, each filing an average of 3.3 forms annually. It can be presumed that almost all employers submitting EEO-1 forms are also federal contractors or subcontractors. Data for the years 1968 and 1977 were unavailable.

On each chart, the solid line represents the actual participation rate of minorities or women in that category. The dotted line represents the participation rate of minorities or women in all categories in the civilian labor force and serves as a point of reference. The hyphenated-line indicates the average rate of growth established between 1966 and the year in which the regulations calling for detailed affirmative action plans containing goals and timetables were issued (1971 for minorities and 1972 for women). This section also contained tables listing participation rates by EEO-1 category and year.

The charts demonstrate that despite the great cost of the current OFCCP program, it has had little impact on the previously established participation rates of minorities or women. It should also be noted that the measuring years, 1971 and 1972, reflect the impact in some categories of the general recession suffered by the country during that period.

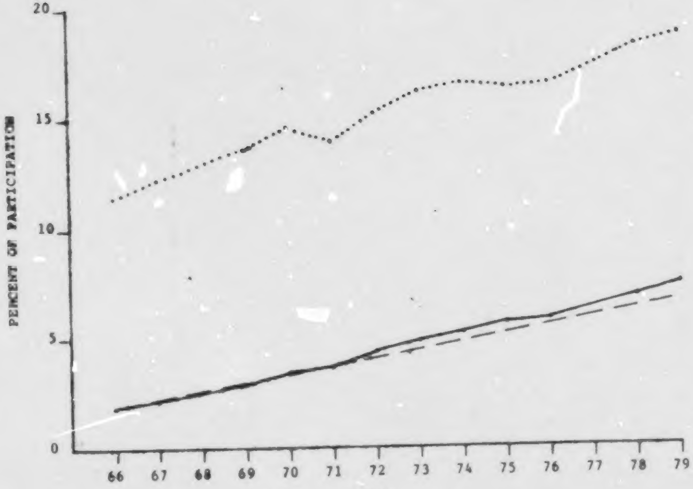
MINORITY PARTICIPATION RATES

EEO-1 Category: Officials and Managers

——— Actual Participation Rate in Category

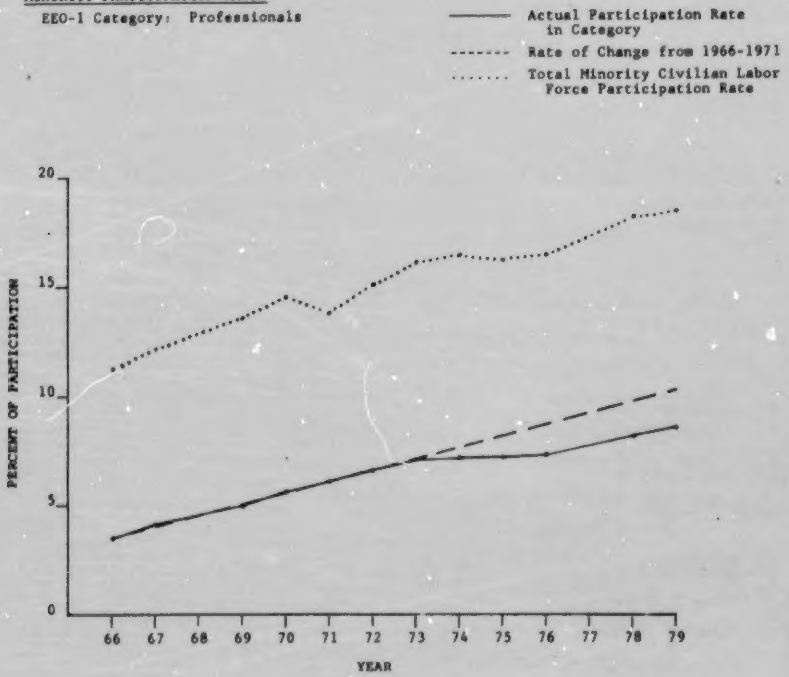
- - - - Rate of Change from 1966-1971

.... Total Minority Civilian Labor Force Participation Rate



MINORITY PARTICIPATION RATES

EEO-1 Category: Professionals



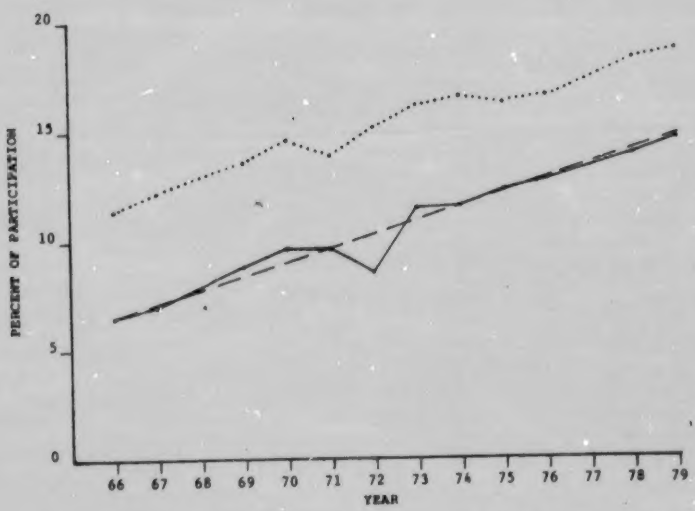
MINORITY PARTICIPATION RATES

EEO-1 Category: Technicians

——— Actual Participation Rate in Category

------- Rate of Change from 1966-1971

.... Total Minority Civilian Labor Force Participation Rate



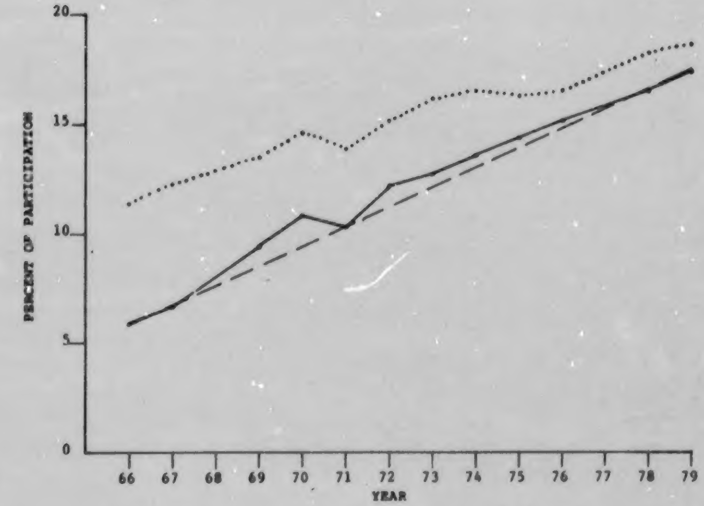
MINORITY PARTICIPATION RATES

EEO-1 Category: Office and Clerical Workers

——— Actual Participation Rate in Category

------- Rate of Change from 1966-1971

.... Total Minority Civilian Labor Force Participation Rate



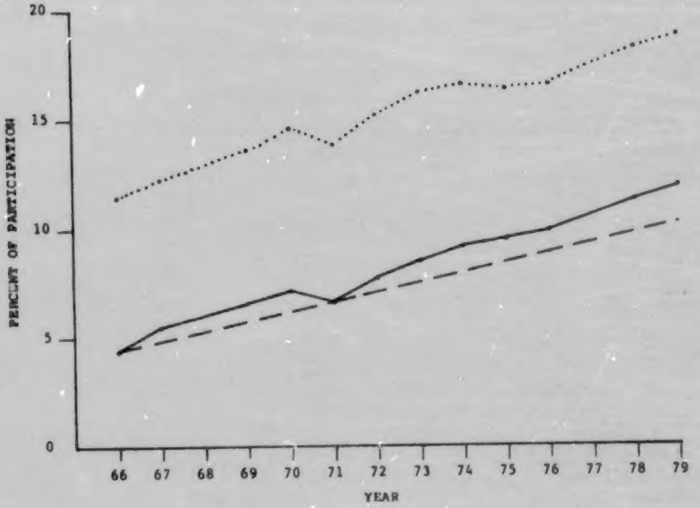
MINORITY PARTICIPATION RATES

EEO-1 Category: Sales Workers

——— Actual Participation Rate in Category

------- Rate of Change from 1966-1971

.... Total Minority Civilian Labor Force Participation Rate



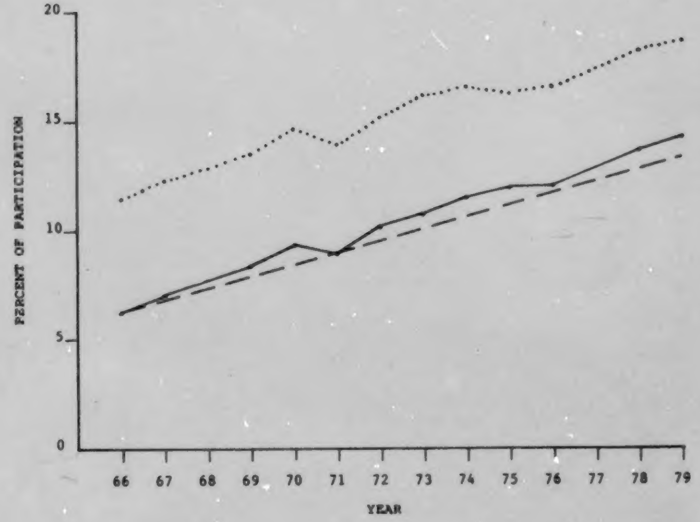
MINORITY PARTICIPATION RATES

EEO-1 Category: Craft Workers

———— Actual Participation Rate in Category

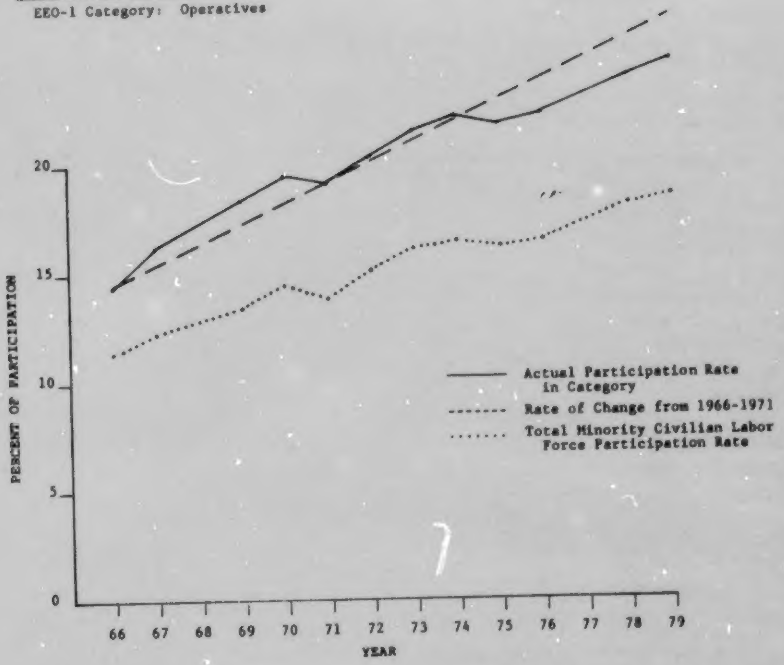
------- Rate of Change from 1966-1971

.... Total Minority Civilian Labor Force Participation Rate



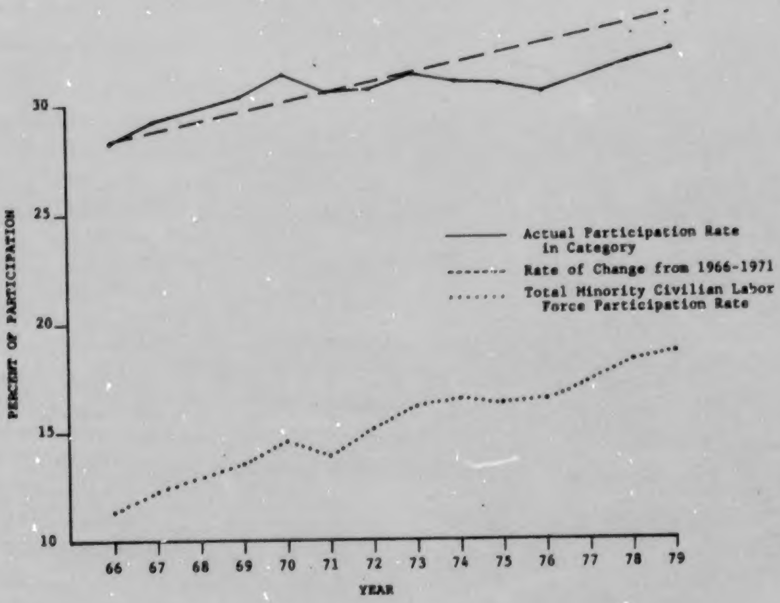
MINORITY PARTICIPATION RATES

EEO-1 Category: Operatives



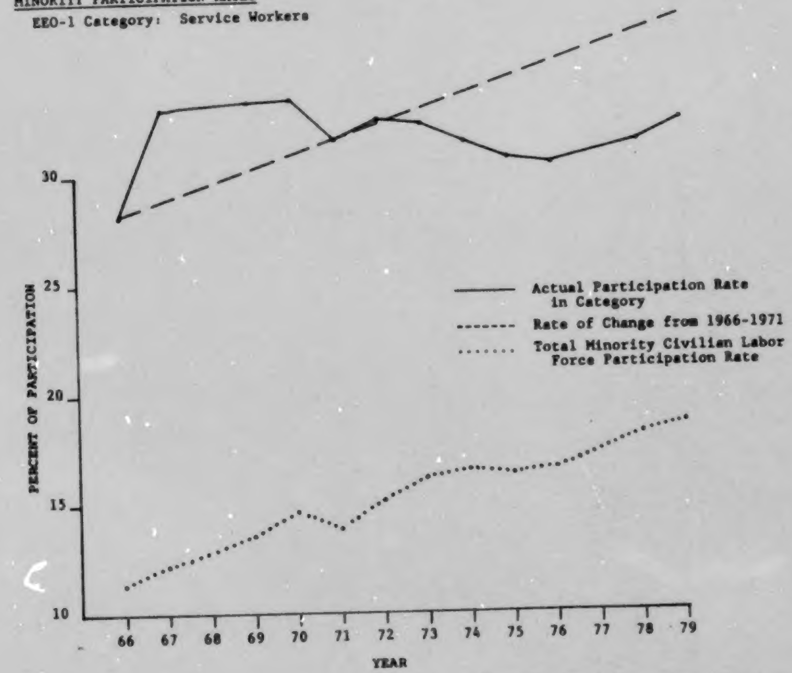
MINORITY PARTICIPATION RATES

EEO-1 Category: Laborers



MINORITY PARTICIPATION RATES

EEO-1 Category: Service Workers



MINORITY PARTICIPATION RATES
BY EEO-1 CATEGORY
(1966-1979)

1. Officials and Managers:

(1966)	1.9	(1971)	3.7	(1976)	5.8
(1967)	2.1	(1972)	4.3	(1977)	NA
(1968)	NA	(1973)	4.8	(1978)	6.8
(1969)	2.9	(1974)	5.1	(1979)	7.2
(1970)	3.3	(1975)	5.6		

2. Professionals:

(1966)	3.5	(1971)	6.1	(1976)	7.4
(1967)	4.1	(1972)	6.7	(1977)	NA
(1968)	NA	(1973)	7.1	(1978)	9.2
(1969)	5.0	(1974)	7.2	(1979)	9.6
(1970)	5.7	(1975)	7.2		

3. Technicians:

(1966)	6.5	(1971)	9.6	(1976)	12.8
(1967)	7.0	(1972)	8.6	(1977)	NA
(1968)	NA	(1973)	11.5	(1978)	13.9
(1969)	8.9	(1974)	11.6	(1979)	14.5
(1970)	9.7	(1975)	12.2		

4. Sales Workers:

(1966)	4.4	(1971)	6.6	(1976)	9.9
(1967)	5.4	(1972)	7.8	(1977)	NA
(1968)	NA	(1973)	8.5	(1978)	11.2
(1969)	6.6	(1974)	9.1	(1979)	11.9
(1970)	7.1	(1975)	9.4		

5. Office & Clerical Workers:

(1966)	5.9	(1971)	10.3	(1976)	15.1
(1967)	6.7	(1972)	12.1	(1977)	NA
(1968)	NA	(1973)	12.8	(1978)	16.5
(1969)	9.4	(1974)	13.7	(1979)	17.3
(1970)	10.9	(1975)	14.4		

6. Craft Workers:

(1966)	6.2	(1971)	8.9	(1976)	12.0
(1967)	7.0	(1972)	10.1	(1977)	NA
(1968)	NA	(1973)	10.8	(1978)	13.7
(1969)	8.4	(1974)	11.5	(1979)	14.2
(1970)	9.2	(1975)	11.9		

7. Operatives:

(1966)	14.4	(1971)	19.1	(1976)	22.2
(1967)	11.2	(1972)	20.3	(1977)	NA
(1968)	NA	(1973)	21.6	(1978)	24.0
(1969)	18.4	(1974)	22.1	(1979)	24.6
(1970)	19.5	(1975)	21.9		

8. Laborers:

(1966)	28.2	(1971)	30.6	(1976)	30.5
(1967)	29.2	(1972)	30.8	(1977)	NA
(1968)	NA	(1973)	31.3	(1978)	31.9
(1969)	30.4	(1974)	31.0	(1979)	32.4
(1970)	31.3	(1975)	30.9		

9. Service Workers:

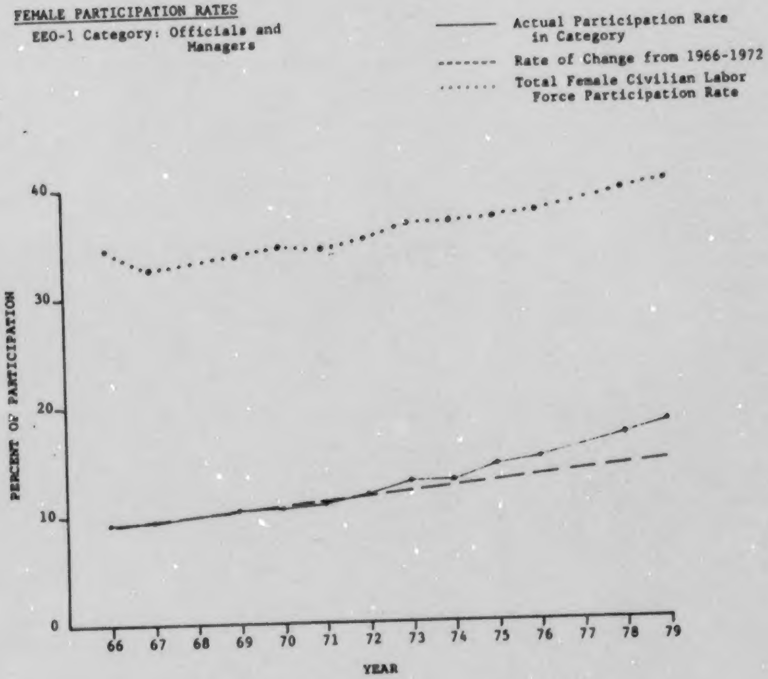
(1966) 28.1	(1971) 31.7	(1976) 30.5
(1967) 33.0	(1972) 32.6	(1977) NA
(1968) NA	(1973) 32.3	(1978) 31.5
(1969) 33.4	(1974) 31.5	(1979) 32.4
(1970) 33.5	(1975) 30.8	

10. Civilian Labor Force Participation Rates:

(1966) 11.4	(1971) 13.9	(1976) 16.5
(1967) 12.2	(1972) 15.1	(1977) NA
(1968) NA	(1973) 16.1	(1978) 18.1
(1969) 13.6	(1974) 16.5	(1979) 18.6
(1970) 14.7	(1975) 16.2	

FEMALE PARTICIPATION RATES

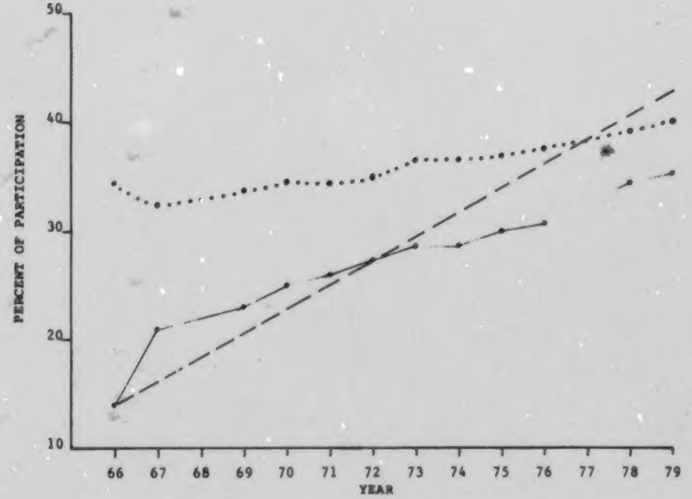
EEO-1 Category: Officials and Managers



FEMALE PARTICIPATION RATES

EEO-1 Category: Professionals

———	Actual Participation Rate in Category
-------	Rate of Change from 1966-1972
....	Total Female Civilian Labor Force Participation Rate



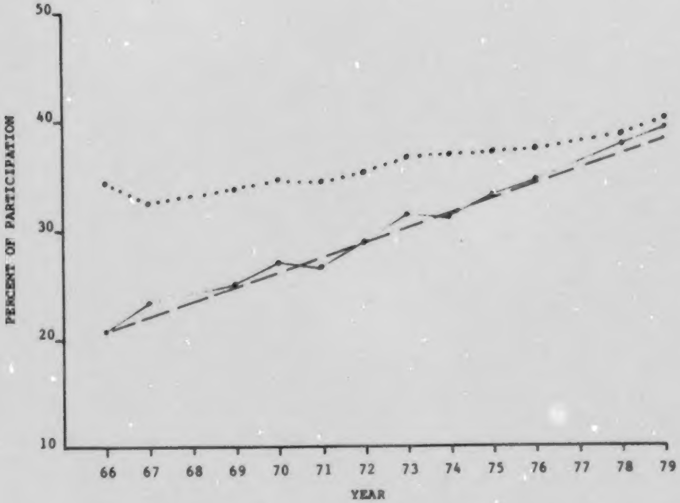
FEMALE PARTICIPATION RATES

EEO-1 Category: Technicians

——— Actual Participation Rate in Category

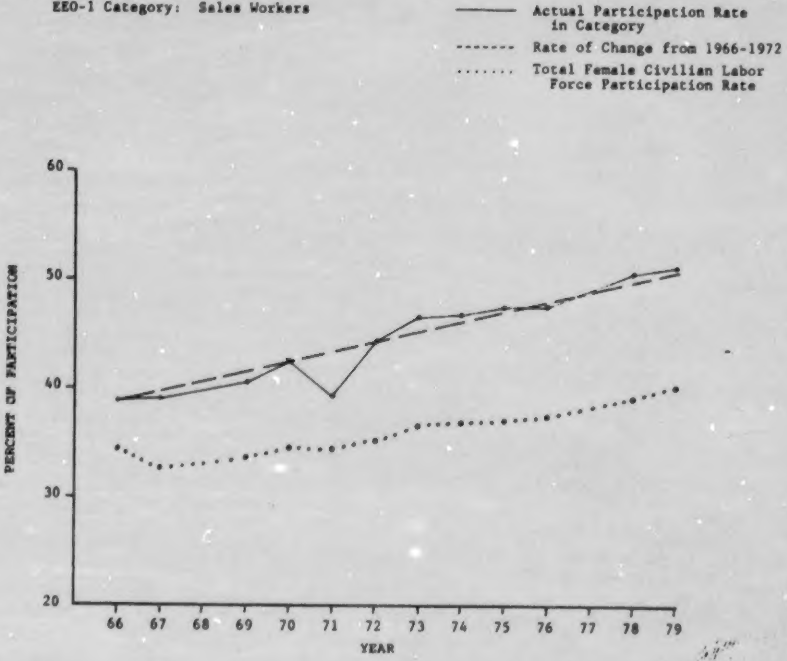
------- Rate of Change from 1966-1972

.... Total Female Civilian Labor Force Participation Rate



FEMALE PARTICIPATION RATES

EEO-1 Category: Sales Workers



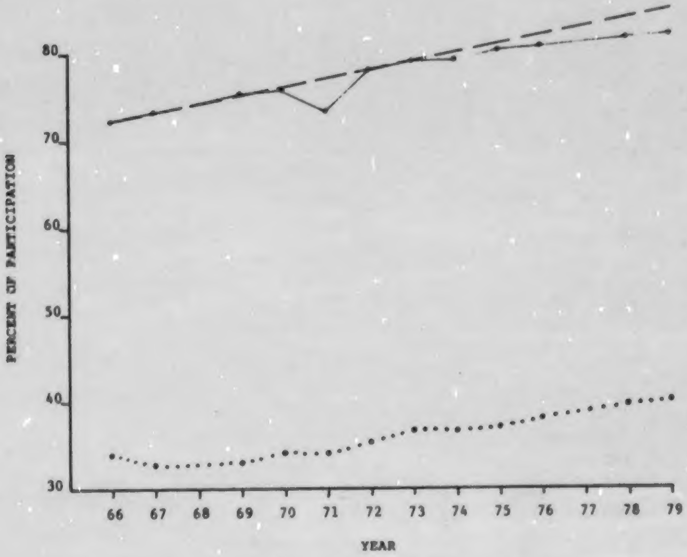
FEMALE PARTICIPATION RATES

EEO-1 Category: Office and Clerical Workers

——— Actual Participation Rate in Category

------- Rate of Change from 1966-1972

.... Total Female Civilian Labor Force Participation Rate



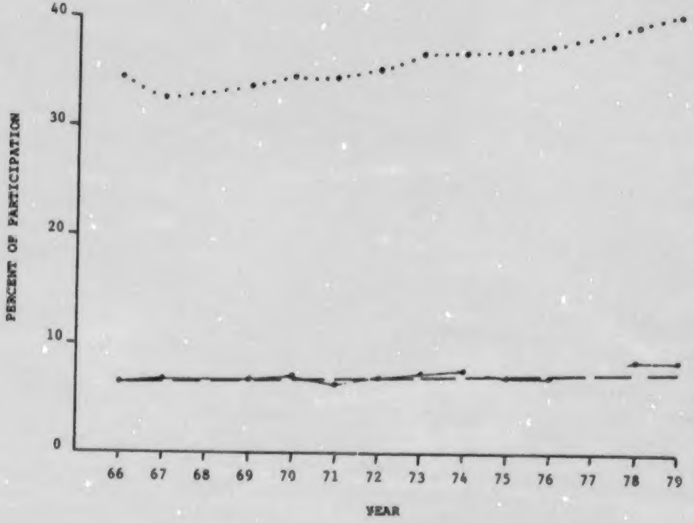
FEMALE PARTICIPATION RATES

EEO-1 Category: Craft Workers

——— Actual Participation Rate in Category

------- Rate of Change from 1966-1972

.... Total Female Civilian Labor Force Participation Rate



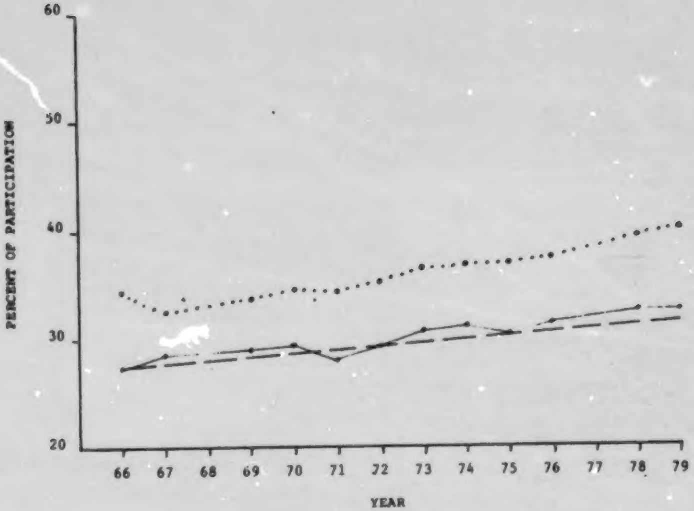
FEMALE PARTICIPATION RATES

EEO-1 Category: Operatives

——— Actual Participation Rate in Category

------- Rate of Change from 1966-1972

.... Total Female Civilian Labor Force Participation Rate



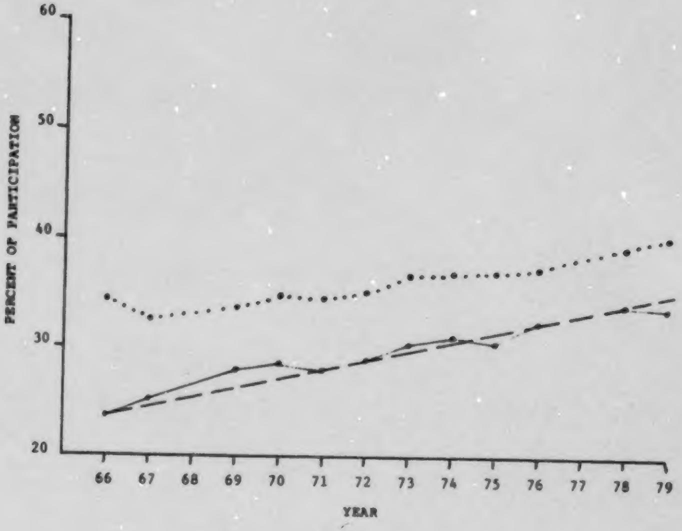
FEMALE PARTICIPATION RATES

EEO-1 Category: Laborers

——— Actual Participation Rate in Category

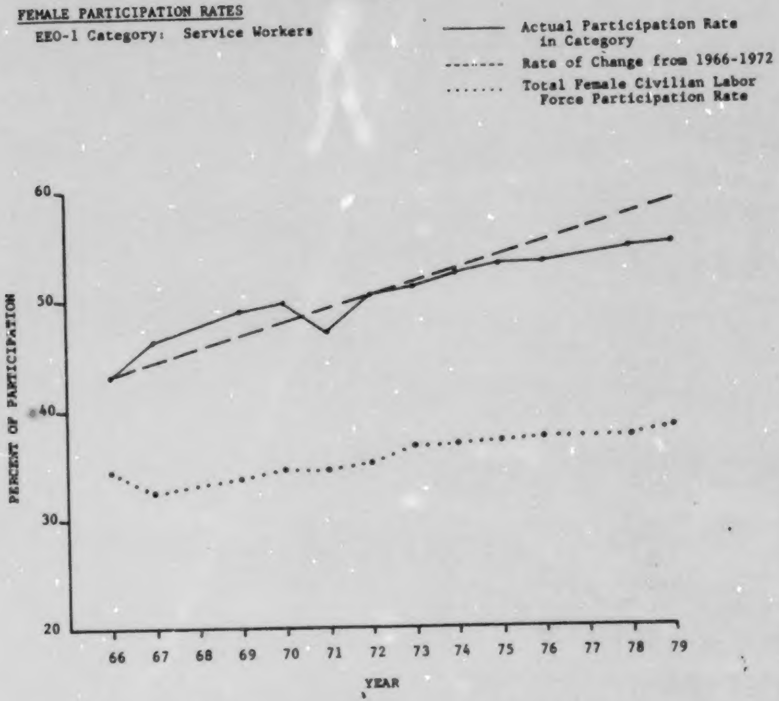
------- Rate of Change from 1966-1972

.... Total Female Civilian Labor Force Participation Rate



FEMALE PARTICIPATION RATES

EEO-1 Category: Service Workers



FEMALE PARTICIPATION RATES
BY EEO-1 CATEGORY
(1966-1979)

1. Officials and Managers:

(1966)	9.4	(1971)	10.9	(1976)	14.9
(1967)	9.5	(1972)	11.9	(1977)	NA
(1968)	NA	(1973)	12.9	(1978)	17.0
(1969)	10.2	(1974)	13.1	(1979)	18.1
(1970)	10.3	(1975)	14.3		

2. Professionals:

(1966)	14.0	(1971)	26	(1976)	30.8
(1967)	21.1	(1972)	27.7	(1977)	NA
(1968)	NA	(1973)	28.8	(1978)	34.4
(1969)	23.1	(1974)	28.8	(1979)	35.8
(1970)	25.0	(1975)	30.0		

3. Technicians:

(1966)	20.7	(1971)	26.3	(1976)	34.3
(1967)	23.8	(1972)	28.9	(1977)	NA
(1968)	NA	(1973)	31.7	(1978)	37.9
(1969)	25	(1974)	31.2	(1979)	39.3
(1970)	27	(1975)	33.3		

4. Sales Workers:

(1966)	38.8	(1971)	39.7	(1976)	47.8
(1967)	38.9	(1972)	44.2	(1977)	NA
(1968)	NA	(1973)	46.5	(1978)	50.4
(1969)	40.5	(1974)	46.6	(1979)	51.6
(1970)	42.5	(1975)	47.8		

5. Office & Clerical Workers:

(1966)	72.4	(1971)	73.8	(1976)	81.0
(1967)	73.7	(1972)	78.2	(1977)	NA
(1968)	NA	(1973)	79.2	(1978)	82.0
(1969)	75.5	(1974)	79.3	(1979)	82.4
(1970)	76.3	(1975)	80.2		

6. Craft Workers:

(1966)	6.3	(1971)	6.1	(1976)	7.1
(1967)	6.8	(1972)	7	(1977)	NA
(1968)	NA	(1973)	7.5	(1978)	8.6
(1969)	6.8	(1974)	7.7	(1979)	8.5
(1970)	6.9	(1975)	7.1		

7. Operatives:

(1966)	27.7	(1971)	28	(1976)	31.7
(1967)	28.6	(1972)	29.6	(1977)	NA
(1968)	NA	(1973)	30.7	(1978)	32.4
(1969)	29	(1974)	31.4	(1979)	32.4
(1970)	29.7	(1975)	30.3		

8. Laborers:

(1966)	23.9	(1971)	28	(1976)	32.2
(1967)	25.6	(1972)	29	(1977)	NA
(1968)	NA	(1973)	30.2	(1978)	34.0
(1969)	28	(1974)	31.3	(1979)	33.9
(1970)	28.5	(1975)	30.7		

9. Service Workers:

(1966)	43.3	(1971)	47.4	(1976)	53.7
(1967)	46.1	(1972)	50.2	(1977)	NA
(1968)	NA	(1973)	51.5	(1978)	54.7
(1969)	48.9	(1974)	52.2	(1979)	55.1
(1970)	49.9	(1975)	53.4		

10. Civilian Labor Force Participation Rate:

(1966)	34.2	(1971)	34.2	(1976)	37.8
(1967)	32.6	(1972)	35.4	(1977)	NA
(1968)	NA	(1973)	36.5	(1978)	39.6
(1969)	33.9	(1974)	36.7	(1979)	40.1
(1970)	34.5	(1975)	37.1		

Mr. HAWKINS. Mr. Washington?

Mr. WASHINGTON. Thank you, Mr. Chairman, and thank you Mr. Robinson and Mr. Johnson. I want to thank you also for waiting throughout the entire morning in order to testify.

Mr. Johnson, I notice on page 1 of your submission that you suggest the OFCCP should target its enforcement procedure on the worst first basis. I suppose you know, of course, that the EEOC has done that with very good success.

Unfortunately, one of the proposals from Mr. Reagan is that the EEOC Commissioners will no longer be able to issue charges which would keep that agency from targeting upon a worst first basis.

Based upon your submission, I gather your position—and I hope you could speak for the business community—would be that you would be opposed to such a change on the part of the administration?

Mr. JOHNSON. I didn't come prepared to speak about any EEOC proposed changes. I am really not aware that the administration has proposed that the EEOC Commissioners not be allowed to issue a complaint.

Philosophically, I agree that for any governmental agency to operate effectively with the mass of contractors out there, the OFCCP as well as EEOC should target based upon the information they have available to them as to who is worst and deal with the worst first.

Mr. WASHINGTON. But let's not be philosophical. Let's be very realistic and practical.

You have a good grasp and awareness of the EEOC evidently because you are strongly suggesting it be the enforcement agency.

Mr. JOHNSON. Correct.

Mr. WASHINGTON. And if the Commissioners cannot initiate charges, then obviously you remove whatever sanctions or power that agency has to enforce its orders. I would think it would be a very simply yea or nay on the question of whether or not you would support the Reagan proposals and remove that initiatory power for them to initiate charges.

Mr. JOHNSON. I am not opposed to the Commission having the right to issue a charge.

Mr. WASHINGTON. Would the business community of Chicago be inclined to support that position, Mr. Robinson?

Mr. ROBINSON. I would say so. I would think so.

Mr. WASHINGTON. I would hope so. Otherwise, we're in a catch-22 situation.

Also, Mr. Johnson, the proposed changes of OFCCP by the Reagan administration obviously and clearly and undebatably would reduce the amount of coverage in terms of employees and business in this country.

What would be the business community's position or, more specifically, what would be your position on that?

Mr. JOHNSON. I would have to give you my position and not the business community's position. Personally, I feel that most of the jobs in this country are held with small employers, employers of less than 250 employees. And from an employment and training objective, if our concern here is to increase the total opportunities for minorities and women, I think a worst-first basis is much better than targeting on large companies exclusively, if that is, in fact, the proposal.

I am not in favor of eliminating coverage based upon size of employer. I do think we have to be concerned about reporting requirements and any bureaucracy that a small employer is subjected to, but from my experience with the Chicago Alliance of Business, it is clear that the market out there that provides future job opportunities is increasingly with smaller employers. That's where all the action is.

The very large employers in this country, the top 100 employers in this country, are not expanding job opportunities. In other words, they are not having any aggregate increase in employment. So other than attrition, they aren't going to have that many opportunities available. It is really the small and intermediate size businesses that have the increase in job opportunities.

Mr. WASHINGTON. Mr. Robinson, I know how you feel, but in terms of the business community what would be their position on that?

Mr. ROBINSON. Well, first of all, I don't speak for the business community. I am speaking only for a limited number of companies in Chicago United.

Our focus in the whole area of minority economic and business development is toward the development of small businesses. Our focus is to provide minorities an opportunity to control capital. We feel the bottom line is economic parity in terms of being able to run factories, labor-intensive type jobs that the minority community needs in particular, that they be involved in controlling equipment, et cetera. These are the things that are going to impact on the economy in the long run for minorities. So our focus is definitely through business development, through capital formation, and opportunities that will solve affirmative action.

The urban enterprise zones is a very interesting concept, with the involvement of a reduction of taxes and various incentive programs coming down from Washington. There is a question in my mind as to where is this business development going to take place, not so much as to whether it is going to take place, or whether or not business is going to benefit, or whether or not jobs and production will increase. The issue to Chicago United is if, in fact, minorities are going to benefit by the jobs being accessible.

Mr. WASHINGTON. There are a lot of questions about the enterprise zones, not only when and where, but how long, if ever, would it take to have any appreciable effect upon the employment question. That's a highly debatable question, and I certainly want to go on record as saying that the enterprise zones are on the drafting board and are far from complete. There is a lot of work to be done. And even if done, there is no guarantee that it will pick up any slack in the near or appreciable future. So I don't want anyone to hang his hat on that concept.

But let's get back to reporting. Mr. Johnson, I am concerned about the suggestions that Government should not continue to require affirmative proof of civil progress by using numerical measurements of compliance reporting. How can you measure progress unless you have statistics? How can you determine whether someone is striving toward goals and timetables unless you have specific reports dealing with that?

I was concerned that you were saying you didn't want small business to get bogged down in reports and ad infinitum. I would agree with that. But clearly, if the Government has the discretion to let out contracts, they also have the discretion to impose standards and it follows as night does day that they must have some way of statistically making certain that those standards are being adhered to.

Would you comment on that?

Mr. JOHNSON. Certainly.

I am not opposed to goals and timetables, nor am I opposed to using a statistical measure to target or to judge progress. In fact, I think it is necessary. But I could very well be concerned about the type of reporting that might be required. So it is not a philosophical objection to reporting. I offer no such objection.

But I would be concerned about. I believe when Nancy Kreiter from Women Employed was talking about the Carter regulations which have not been implemented, there was the suggestion that there would be a new affirmative action program summary form. Not knowing what form that document will take, I really can't intelligently criticize it or support it because it has not been revealed to us. We don't know what kind of reporting we're talking about.

So I am not opposed to using a statistical measure at all. I believe, in fact, that you must target an employer based upon their underutilization, which is going to be a statistical measure.

Mr. WASHINGTON. One last question on systemic investigations.

Under the present administration, there has been a gradual attempt and a movement toward coordinating EEOC and OFCCP in terms of systemic investigations. I gather that the Reagan administration is not too much concerned about continuing that coordinated process.

What would be your comment on that?

Mr. JOHNSON. I believe that systemic discrimination investigations, investigations of past discrimination, should be conducted by the EEOC organizationally, not OFCCP. I believe that the systemic approach of the early to middle seventies was not very productive in terms of too much being bitten off at one time, instead of containing an investigation to something that is manageable. Therefore, I have no opposition to systemic investigations, but I think when you are looking at a large employer and all practices, you are taking on more than can be easily managed, as opposed to doing a systemic investigation a chunk at a time or an issue at a time.

Mr. ROBINSON. Could I add one comment about reporting?

I think reporting and voluntarism can work in the private sector, as long as the reporting system is made so that the public has access to it.

I have with me a document that I would like to submit to the committee that has to do with the activities of Chicago United in the various business development areas that I mentioned.

If, in fact, the principals of Chicago United hold themselves accountable and will make reporting to the public, these things can develop. For example—this goes back a few years—in the construction area there was a goal of Chicago United, in all the new construction going on among its members, to have at least 35 to 40 percent minority participation in minority contractors. At that time Standard Oil, the First National Bank Building, Montgomery Ward, CNA, Sears Tower, and some activities at Continental Bank in terms of renovation was going on. That goal was achieved in minority contractors. Reporting was done internally and also openly to the public.

Mr. WASHINGTON. I suppose the chairman will accept that submission.

Mr. HAWKINS. Without objection.

[The material submitted by Alexander Robinson follows:]

* * * * * * * * * * * * * * *

CHICAGO UNITED
MINORITY BUSINESS DEVELOPMENT
TASK FORCE
1981

* * * * * * * * * * * * * * *

Edward S. Donnell, Chairman

James J. O'Connor, Vice-chairman

Edwin C. Berry

Alvin J. Boutte

George R. Brokemond

Thomas J. Burrell

Weston R. Christopherson

Ernest T. Collins

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Edward R. Telling

Staff: Alexander P. Robinson

Ex-officio: Charles A. Davis

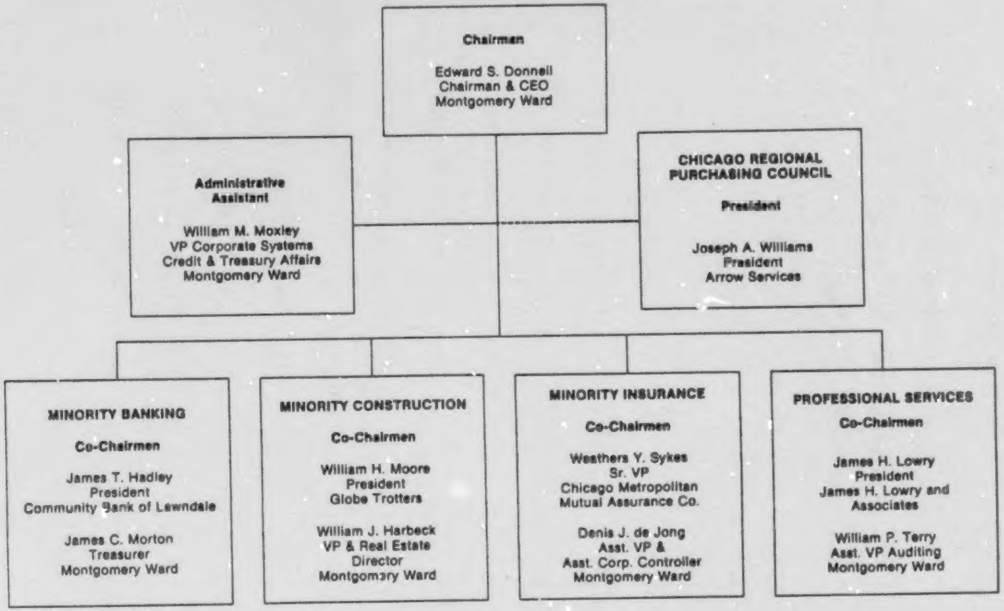
Ex-officio: Charles Marshall

CHICAGO UNITED

MINORITY BUSINESS DEVELOPMENT TASK FORCE

1980 ACCOMPLISHMENTS

CHICAGO UNITED MINORITY ECONOMIC DEVELOPMENT TASK FORCE


Chairman
Edward S. Donnell
Chairman & CEO
Montgomery Ward
Administrative Assistant
William M. Moxley
VP Corporate Systems
Credit & Treasury Affairs
Montgomery Ward
CHICAGO REGIONAL PURCHASING COUNCIL
President
Joseph A. Williams
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Arrow Services
MINORITY BANKING
Co-Chairmen
James T. Hadley
President
Community Bank of Lawndale
James C. Morton
Treasurer
Montgomery Ward
MINORITY CONSTRUCTION
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William H. Moore
President
Globe Trotters
William J. Harbeck
VP & Real Estate
Director
Montgomery Ward
MINORITY INSURANCE
Co-Chairmen
Weathers Y. Sykes
Sr. VP
Chicago Metropolitan
Mutual Assurance Co.
Denis J. de Jong
Asst. VP &
Asst. Corp. Controller
Montgomery Ward
PROFESSIONAL SERVICES
Co-Chairmen
James H. Lowry
President
James H. Lowry and
Associates
William P. Terry
Asst. VP Auditing
Montgomery Ward

1980 GOALS

To increase purchases of goods and services from minority suppliers by major companies.

To increase the use of minority banks and savings and loan associations by major companies.

To increase the utilization of minority construction contractors and tradesmen in Chicago metropolitan construction projects.

To create new employment opportunities for minorities in the field of insurance through the fostering of competitive business opportunities primarily with major corporations and to develop a formalized education program to acquaint minorities with career opportunities in the field of insurance.

To aid minority professional service firms in the fields of architecture and engineering, law, accountancy, advertising and marketing, personnel/employment and management consulting in securing competitive opportunities for business from major corporations and government agencies.

To encourage and aid in the growth of existing minority businesses and in the development of new minority firms as feasible.

CHICAGO REGIONAL PURCHASING COUNCIL, INC.

1980 ACCOMPLISHMENTS

CHICAGO REGIONAL PURCHASING COUNCIL, INC.

BOARD OF DIRECTORS

Preston Kavanagh
Vice President
Commonwealth Edison Company

Joseph A. Williams
Owner
Arrow Services

Angelo Velasquez
President
A & R Janitorial Services

Raymond T. O'Neal
Coordinator, Minority Business
Esmark, Incorporated

Dominic J. Fabbri
Vice President
Administrative Services
First Federal Savings & Loan
Association of Chicago

James Gullatte
President
Reliable Press Company, Inc.

Tom Bronson
Manager of Purchasing
Allstate Insurance Company

Jerry Frazier
Buyer
Caterpillar Tractor Co.

John Kane
Vice President
Corporate Materials Management
Abbott Laboratories

Donald J. McLachlan
Isham, Lincoln & Beale
Counselors at Law

Ralph McKee
General Purchasing Manager
Montgomery Ward & Co., Inc.

Delores Miller
Administrator, Affirmative
Action
Illinois Central Gulf
Railroad

Charles Murphy
Director of Purchasing
The Anderson Company

William Newby
Vice President
Public Relations
Jewel Food Stores

Anders C. Rasmussen
Manager, Purchasing-
Manufacturing
Western Electric Company

H. Kris Ronnow
Vice President
Harris Trust & Savings Bank

Franklin C. Senior
Group Supervisor
Procurement Administration
Sundstrand Aviation Operations

GOAL

TO INCREASE PURCHASES OF GOODS AND SERVICES FROM MINORITY SUPPLIERS BY MAJOR COMPANIES.

OBJECTIVES

A. To establish a collective goal of a 10% increase in minority purchases which would represent a summation of the purchasing goals established individually by each of the participating Chicago United and non-Chicago United firms.

Result: For comparable 1979/1980 reporting companies, a later agreed upon goal of a 15% increase was exceeded. The total 1980 goal was $397.4 million and actual purchases were $401.4 million. Total 1980 purchases for all reporting companies were $411.8 million, a 12.3% increase over 1979. (See statistical report following.)

B. Program Objectives

1. Complete certification of minority ownership of 200 of the 700 listed minority businesses.

   Result: Only 75 of the scheduled 200 firms anticipated have been fully certified by the CRPC staff. The amount of time required to visit each vendor was greater than anticipated. In addition, a problem arose in the application of the procedures which resulted in a temporary cessation of the program late in the year.

2. Sponsor one Executive Development Workshop for minority business management personnel.

   Result: A workshop was held October 23-25, 1980, with 35 students in attendance. This class was sponsored with a grant from the Illinois Central Gulf Railroad.

3. Publish the 1980 edition of the Greater Chicago Minority Vendors Directory.

   Result: A directory was published in April 1980 which included nearly 800 minority vendor profiles. At year end, 750 copies of the directory had been sold to corporations across the country.

4. Sponsor one buyer seminar for corporate purchasing personnel.

   Result: A buyer education seminar was held on September 26, 1980, funded by CRPC's Transportation Sub-Council members.

5. Sponsor an information session on CRPC and NMPC for public affairs/public relations people in member corporations.

   Result: This objective was cancelled at mid-year on the advice of several public relations executives. It was determined that the work and expense involved would not result in any tangible benefit for CRPC.

6. Develop one new sub-council in the Southwest Suburban/Joliet area.

   Result: This objective was not accomplished. With the Rockford Sub-Council becoming fully operational in 1980, it was determined that CRPC's staff level was insufficient to adequately service another sub-council.

7. Increase CRPC corporate membership by 15 majority corporations.

   Result: During 1980, CRPC added 14 new corporations to its list of active members.

8. Publish bi-monthly newsletter.

   Result: A newsletter including activity information, vendor profiles and information of general interest to members and vendors, was distributed bi-monthly to a mailing list of approximately 300 individuals.

CHICAGO REGIONAL PURCHASING COUNCIL, INC.

1980 Minority Purchasing Report

Comparable Figures: 52 companies reporting 1979 and 1980

Chicago				Nationwide				Total			
1979	1980	1980* Goal	Variance	1979	1980	1980 Goal	Variance	1979	1980	1980 Goal	Variance
96.07	114.47	110.5	3.6%	249.5	286.9	286.9	-0-	345.57	401.4	397.4	1%

*1980 Goals were expressed as 15% over 1979 actual figures.

Total Minority Purchases Reported: 1979, 59 companies reporting; 1980, 55 companies reporting.

Chicago			Nationwide			Total		
1979	1980	% Increase	1979	1980	% Increase	1979	1980	% Increase
98.4M	116.6M	18.5%	268.3M	295.2M	10%	366.7M	411.8M	12.3%

BANKING COMMITTEE

1980 ACCOMPLISHMENTS

Co-Chairmen

James T. Hadley
President
Community Bank of Lawndale

James C. Morton
Treasurer
Montgomery Ward

Members

Gene O. Armstrong
Vice President
Highland Community Bank

Joseph Arns
Director, Banking & Finance
Zenith Radio Corporation

Emmet P. Cassidy
Director of Treasury Services
Peoples Energy Corp.

Walter H. Clark
Executive Vice President
First Federal Savings and
Loan Association of Chicago

Francis J. Cyr
President
Washington National Bank of
Chicago

Jay Dittus
Assistant Treasurer for
Cash and Investment
Inland Steel Company

William T. Dwyer
Vice President
Correspondent Bank Division
First National Bank

James E. DeNaut
Second Vice President
Correspondent Banking
Continental Illinois National
Bank & Trust Company of
Chicago

E. R. Grassmick
General Supervisor
Treasury Department
Illinois Bell Telephone Co.

William H. Honaker
Financial Analyst
The Chicago Tribune

Darnell Hawkins
President
Morgan Park Savings & Loan
Association

George Jones
Vice President
Seaway National Bank

Frederick C. Kautz
Assistant Treasurer
Borg-Warner Corporation

Charles Moritz
Assistant Treasurer
Jewel Companies, Inc.

Arthur R. Messerschmidt
Assistant Treasurer
Kraft, Inc.

Ralph V. Nord
Assistant Treasurer
Commonwealth Edison Co.

Nolan L. North
Assistant Treasurer
CNA

Paul Ogorzelec
Partner
Arthur Andersen & Company

Rudolph Pilch
Treasurer
Field Enterprises, Inc.

Oren T. Pollock
Assistant Treasurer
Midwestern Territory
Sears, Roebuck and Company

Lonnie Radcliffe
Assistant Vice President -
Marketing
Independence Bank of Chicago

David Robinson
President
Tri-State Bank

Beverly Y. Scipio
Director of Marketing
Ill. Service Federal
Savings & Loan

William Valiant
Vice President & Treasurer
Borg-Warner Corporation

Ernest Seccombe
Associate Manager of Banking
Standard Oil Co. (Indiana)

Charles Wells
President
Union National Bank

GOAL

TO INCREASE THE USE OF MINORITY BANKS AND SAVINGS AND LOAN ASSOCIATIONS BY MAJOR COMPANIES.

OBJECTIVES

A. To increase by 10% the collective total business placed by CU and CRPC member companies with minority banks and savings and loan associations in 1980.

Result: In total, the business placed by CU firms with minority financial institutions on a local and national basis surpassed the 10% objective. Certificates of deposit and treasury tax and loan account balances increased significantly. Credit facilities were up sharply although useage was off slightly. Operating account balances were off modestly.

B. To continue the exporting of CU's model minority banking program to major corporations through the distribution of the "How-To" guide on minority banking, locally and nationally.

Result: The CU model minority banking program continued to be exported nationwide. Five Chicago firms have a representative serving as Corporate Advisor to the National Bankers Association. National programs to stimulate minority banking services will benefit local institutions through increased credit participation.

C. To develop a program for establishing relationships between CU/CRPC companies and minority owned savings and loan institutions.

Result: The Depository Institution Deregulation and Monetary Control Act of 1980 will permit corporations to participate more effectively with Savings and Loan Institutions. A sub-committee will develop an action plan.

D. To implement a program to encourage the use of minority banking by non-CU/CRPC member firms.

Result: Earlier this year, meetings were held for the purpose of acquainting the minority bankers with corporate treasury personnel.

E. To further develop the reporting system by CRPC firms that will, while maintaining confidentiality, insure complete and accurate reporting of the results obtained in minority banking.

Result: Agreement has been reached to further improve the reporting for CU/CRPC companies that will enhance the quality and quantity of responses.

F. To review the minority bankers call program to determine its feasibility and strategies for improvement if continued.

Result: (See D. above.)

CHICAGO UNITED
CONFIDENTIAL MINORITY BANKING REPORT
Comparison: 1980 with year 1979

(thousands of dollars)

	Actual Year - 1979		Actual Year - 1980		Twelve Month Period Ending December 31, 1980
	Chicago*	Total U.S.	Chicago*	Total U.S.	
1. OPERATING ACCOUNTS					
Aggregate average daily balance	6,329	11,330	5,509	10,889	16 companies reported operating accounts in Chicago, 6 of whom reported operating accounts outside Chicago. 8 companies reported no operating accounts.
Percentage Increase/(Decrease) 1980 vs. 1979			(13.0)	(3.9)	
2. CERTIFICATE OF DEPOSIT#					
Average daily amount during period	3,303	4,420	5,481	11,840	12 companies reported average daily amounts in Chicago, 4 of whom also reported average daily amounts outside Chicago 12 companies reported no average daily amount.
Percentage Increase/(Decrease) 1980 vs. 1979			65.9	167.9	
3. TREASURY TAX & LOAN DEPOSITS@					
A. Total deposits during period	132,128	133,251	167,828	225,534	7 companies reported treasury tax and loan deposits in Chicago, 2 of whom also reported treasury tax and loan deposits outside Chicago. 17 companies reported no treasury tax and loan deposits.
Percentage Increase/(Decrease)			27.0	69.3	

	Actual Year - 1979		Actual Year - 1980		Twelve Month Period Ending December 31, 1980
	Chicago*	Total U.S.	Chicago*	Total U.S.	
4. CREDIT FROM MINORITY BANKS AND S & L ASSOCIATIONS					
A. Lines of Credit ‡ (Average daily amount)	10,177	30,109	12,019	42,648	11 companies reported lines of credit in Chicago, 5 of whom also reported lines of credit outside Chicago. 13 companies reported no lines of credit.
Percentage Increase/ (Decrease) 1980 vs. 1979			17.1	41.3	
B. Borrowings (Loans to company - direct or guaranteed-average daily borrowings)	3,777	5,583	2,919	5,577	6 companies reported borrowings in Chicago, 2 of whom also reported borrowings outside Chicago. 13 companies reported no borrowings.
Percentage Increase/ (Decrease) 1980 vs. 1979			(22.7)	(.1)	
5. CREDIT TO MINORITY BANKS AND SAVINGS & LOANS					
A. Lines of credit (Average daily amount)	-----	-----	1,500	1,500	One company reported lines of credit in Chicago only.
B. Loans (To bank or principals - bank related - average daily amount	5,490	5,490	1,955	1,955	One company reported loans in Chicago only.
Percentage Increase/ (Decrease) 1980 vs. 1979			64.4	64.4	

	Actual Year - 1979		Actual Year - 1980		Twelve Month Period Ending December 31, 1980
	Chicago*	Total U.S.	Chicago*	Total U.S.	
C. Participations Sold (Average daily amount)	-----	-----	1,703	1,703	Two companies reported participations sold in Chicago.
D. Overlines granted (average daily amount)	878	878	869	869	Two companies reported overlines granted in Chicago.
Percentage Increase/ (Decrease)			(1.0)	(1.0)	

* The Chicago area minority banks are Community Bank of Lawndale, Highland, Independence, Seaway, South Side, Tri-State, Washington National and Union National. The minority-owned savings and loan associations are American Federal, Illinois Federal and Morgan Park Federal.

# Although the number of companies that reported activity during 1980 remained about constant with the year previous, the average daily amount of CDs increased significantly. Higher than historic yields as well as increased participation contributed to this improvement.

@ The total TT&L deposits reported by fewer companies in 1980, increased by more than 69% from the year previous.

¢ The toal number of companies that reported credit line activity was less than the year previous; however, the total average of credit lines increased by 41.3%.

CONSTRUCTION COMMITTEE

1980 ACCOMPLISHMENTS

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President
Globe Trotters

William J. Harbeck
Vice President & Real
Estate Director
Montgomery Ward

Members

Ray Arias
Chicago State University

D. R. Bittner
Director - Station Construction
Commonwealth Edison

Taylor Cotton
Project Director
Chicago Urban League

Frank Elam
Chicago State University

Joseph M. Evans
Assistant Commissioner
Dept. of Planning
City & Community Development
City of Chicago

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Cedco Contractors Division

Mr. Ed M. Hogan
Dir. Chicago Const. Coordinating
Committee
Sec. Office
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Construction

Harold A. Stanley
Senior Vice President -
Chicago Facilities
First Federal Savings &
Loan Association

Marcus Johnson
District Manager
Illinois Bell Telephone
Company

William D. Fleming
Vice President
Marsh McLennan, Incorporated

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Coordinator
AMOCO Oil Co.

Hugh Mc Rae
Executive Vice President
Construction Employers Assoc.

Bob V. Olson
Montgomery Ward

John Reinke
Construction Engineer -
Room 1732
Peoples Gas, Light & Coke Co.

George Richter
Jewel Food Stores

Sam Sains
Vice President
The Woodlawn Organization

Ray Scannell
Asst. Dir. For Affirmative
Actions
Construction Employers
Association

Lee Rodriguez
Continental Illinois National
Bank & Trust Company

Bill Schultz
Continental Illinois National
Bank & Trust Company

GOAL

TO INCREASE THE UTILIZATION OF MINORITY CONSTRUCTION CONTRACTORS AND TRADESMEN IN CHICAGO METROPOLITAN CONSTRUCTION PROJECTS.

OBJECTIVES

A. Cooperate with other organizations in the development and coordination of training programs for minority tradesmen and to seek public and private sector support and subsidy sponsors for apprenticeship and youth training.

Result: No action.

B. Develop increased confidence in the performance levels of minority contractors.

Result: Developed and introduced and distributed to majority contractors and construction users a carefully screened Minority Contractor Directory.

C. Improve the reliability and credibility of minority contractural proposals.

Result: With cooperation of CEDCO (Chicago Economic Development Corporation), Continental Illinois National Bank and Marsh & McLennon, have developed a set of business procedures and standards of performance to facilitate equitable and competitive bonding and lending practices. These will be lab tested in actual construction projects before incorporation into an extension of the already published Construction Users Model Program.

D. Cooperate and coordinate with other organizations to increase minority contractor opportunities and expand their utilization.

Result: Cooperated with the Chicago Regional Purchasing Council in the development of the Construction Mart of this year's Business Opportunities Fair, and conducted an introductory and informative cocktail reception to 200 minority and majority construction contractors.

E. Seek the development of a unified trade association dedicated to the education and advancement of minority contractors.

Result: No action.

F. Export the Construction Users Model Program to major corporations and governmental agencies and monitor performance.

Result: This objective was completed.

INSURANCE COMMITTEE

1980 ACCOMPLISHMENTS

Co-Chairmen

Weathers Y. Sykes
Senior Vice President
Chicago Metropolitan Mutual
Assurance Company

Denis J. deJong
Assistant Vice President and
Assistant Corporate Controller
Accounting
Montgomery Ward

Members

Stanley C. Bartecki
Staff Officer
First National Bank of Chicago

Gary Bausom
Director of Risk Management
Esmark, Inc.

Warren Breckenridge
Supervisor of Property
Insurance
U.S. Gypsum Company

David Corner
Executive Vice President
Johnson Products Company

John J. Cusack
First Federal Agency

Gus Czizik
Manager, Insurance - North America
Standard Oil Company

John Doering
Director of Insurance & Pensions
Peoples Energy

Paul Duckworth
Assistant Firm Secretary
Arthur Andersen & Company

William Fleming
Vice President
Marsh & McLennan

Lynda Gilliam
Assistant Deputy Director
Illinois Department of
Insurance

Walter Harper
Executive Director
Woodlawn Corp.

Clarence Heidke
Carson Pirie Scott & Company

Judy Lindenmayer
Director of Risk Management
Zenith Radio Corporation

Jerry Mathews
Manager
Illinois Bell Telephone Co.

James McCall
Risk Manager
Quaker Oats Company

Milton Moses
President
Community Insurance Center

John Oster
Insurance Administrator
Commonwealth Edison

Millard Robbins
The Robbins Insurance
Agency, Inc.

Andrew Ruff
Director of Employee Benefits
Borg-Warner Corporation

Alan E. Samuelson
Risk Manager
The Chicago Tribune Company

Phillip Saturnino
Manager, Corp. Insurance Div.
Inland Steel Company

Steven Wilcox
Assistant Vice President
Marsh & McLennan

Robert J. Anderson
Insurance Manager
Field Enterprises

Alan F. Portelli
Risk Management & Accounting
Research Manager
Montgomery Ward

Robert F. Becker
Corporate Risk Manager
Montgomery Ward

Louis F. Materre
Materre Insurance Agency

GOAL

TO CREATE NEW EMPLOYMENT OPPORTUNITIES FOR MINORITIES IN THE FIELD OF INSURANCE THROUGH THE FOSTERING OF COMPETITIVE BUSINESS OPPORTUNITIES, PRIMARILY WITH MAJOR CORPORATIONS, AND TO DEVELOP A FORMALIZED EDUCATION PROGRAM TO ACQUAINT MINORITIES WITH CAREER OPPORTUNITIES IN THE FIELD OF INSURANCE.

OBJECTIVES

A. Increase the premium dollar volume of insurance purchased by CU/CRPC and other major corporations from minority insurance companies, independent agents and brokers to 5% of total 1980 premiums paid to all U.S. vendors and suppliers.

Result: Eighteen Chicago United companies reported the results of total premiums paid in 1980 and those premiums paid to minority insurers and brokers. As illustrated on the report following, total dollar premiums paid to minority insurers and brokers increased by 23.97% from $3.9 million to $4.8 million in 1980.

However, the amount of premiums paid to minority insurers and brokers in 1980 as a percent to total 1980 premiums paid by the 18 Chicago United companies was 2.0%, which is less than the 5% goal of our Insurance Committee. Nevertheless, the improvement in 1980 in the dollar amount of premiums paid to minority insurers and brokers plus the anticipated implementation of the new minority-owned property and casualty company in 1981 are positive steps toward the achievement of our 5% goal.

B. Expand and support education programs in the technical insurance disciplines for minorities.

Result: Substantially met through the introduction of the property and casualty insurance industry through CU's career education program. This program introduced insurance careers to Chicago-area high school students. Property and casualty companies participated in the provision of physical resources, career information and on-site visitations to their companies.

College-level support was accomplished through CU's assistance to a Black university in Washington, D.C. (Howard University) in the first program of its kind in the U.S. This program provides scholarships in property and casualty curriculums and opportunities for placements in Chicago-area corporations.

CU also supported the Chicago Board of Underwriters' outreach educational assistance efforts for minority brokers.

C. Expand the relationship between minority and majority insurance brokers to provide technical and management assistance in the development of new business opportunities for minorities.

Result: On an on-going process, considerable progress has been made through the organization of a special broker sub-committee. The sub-committee is composed of representatives of nine major brokerage firms in the Chicago area. Effective communication has taken place and co-brokering agreements are developing.

D. Expand the number of majority insurance companies that will provide bonding and liability coverage at standard rates for minority contractors.

Result: This objective has been substantially met through the cooperation of CU's Construction Committee. Majority brokers and surety writers have agreed to underwrite minority contractors' bonds at standard rates and to provide assistance to help meet their underwriting standards. Major brokers have also agreed to participate in the SBA bond guarantee program supporting minority contractors. This program is especially designed to assist those contractors identified in CU's minority contractors directory.

E. Research and develop proposals to resolve or ameliorate P&L personal and commercial insurance availability problems which impact adversely on neighborhood, commercial and residential rehabilitation and minority business development.

Result: This objective involves a policy of substantial reinvestment in the commercial, residential and industrial revitalization of inner-city neighborhoods. Insurance underwriting market conditions have been improving and more class A (major) insurers have made their products available. The committee's efforts have supported community organizations and the Illinois Insurance Department in their plans to eliminate unfair insurance redlining underwriting practices.

F. To provide assistance, advice and counsel towards the capitalization of a minority owned and operated property and liability insurance company through the resources of interested Chicago-area MESBICs and other public and private investment sources.

Result: The property and casualty insurance feasibility study is progressing well. The standing committee has provided valuable counsel and assistance. National and local interest in the project is at the highest level ever.

G. To review on a semi-annual basis the performance of CU firms in accomplishing 1980 goals and objectives.

Result: This objective was met. A semi-annual review of performance was completed and presented to Task Force Chairman Edward S. Donnell.

1980 INSURANCE REPORT

(18 Chicago United Companies Reporting)

EMPLOYEE GROUP INSURANCE

Total premiums paid - U.S.	$198,578,639
Total premiums paid to minority companies and brokers	3,964,763

CORPORATE INSURANCE

Total premiums paid - U.S.	42,366,875
Total premiums paid minority brokerage firms	853,416
Grand total premiums paid - U.S.	240,945,514
Total paid minority insurers and brokers	4,818,179
Total premiums paid to minority insurers and brokers - 1979	$ 3,890,116
Percent increase for 1980 over 1979	23.9%

PROFESSIONAL SERVICES
COMMITTEE
1980 ACCOMPLISHMENTS

Co-Chairmen

James H. Lowry
James H. Lowry & Associates
Management Consultants

William P. Terry
Assistant Vice President-Auditing
Montgomery Ward & Company, Inc.

Members

Russell M. Baird
Attorney
Sidley & Austin

Alice Bergmann
Peoples Energy Corporation

Frank B. Brooks
President
Chicago Economic Development Corporation

Thomas Burrell
Burrell Advertising, Inc.

Carmelo M. Cea
C. A. Associates, LTD.

Bernice Cheatham
Marketing Management Specialist
Office of Minority Business Enterprise

Phil Drottning
Standard Oil Co. of Indiana

John L. Smith
Illinois District Director
Small Business Administration

Jack Train
Mets, Train & Youngren, Inc.

Joseph G. Egan
Vice President-Trade Registration
Quaker Oats Company

James Hill, Jr.
Hill, Taylor, Varnada & Brooks
Certified Public Accountants

William R. McClayton
Partner
Arthur Andersen & Co.

Sandy McNeil
McNeil Consulting Co.

Ralph Moore
Foster, Moore & Co.
Financial Consultants

Kevin O'Brien
Minority Business Coordinator
Illinois Bell Telephone Co.

Darlene Paris
Vice President
Answering Systems, Inc.

Jim Titus
Vice President
N.W. Ayers Advertising Agency

Leroy P. Vital
Vital, Gholar, Goosby, Slaughter & Williams

GOAL

TO AID MINORITY PROFESSIONAL SERVICE FIRMS IN THE FIELDS OF ARCHITECTURE AND ENGINEERING, LAW, ACCOUNTANCY, ADVERTISING AND MARKETING, PERSONNEL/EMPLOYMENT AND MANAGEMENT CONSULTING IN SECURING COMPETITIVE OPPORTUNITIES FOR BUSINESS FROM MAJOR CORPORATIONS AND GOVERNMENT AGENCIES.

OBJECTIVES

A. Establish a realistic purchasing dollar volume objective for minority professional services.

Result: Several contracts were awarded to represented minority firms in the areas of Accounting, Legal, Personnel Services, Architecture and Engineering during 1980. Specific dollar amounts were not assigned during the current year; therefore, this objective will be carried forward to next year.

B. Develop and implement an effective reporting and monitoring system.

Result: The reporting and monitoring system was initiated in November 1980, requesting the results through year-end. Initial responses have been received from all the companies; however, it is still too early to report the final results at this time.

C. Develop a model "How-to-Guide" for minority professional firm purchasing.

Result: This objective has been addressed and a specific sub-committee has been assigned this task. The results of this sub-committee are anticipated sometime during 1981; therefore, this objective has been carried forward.

D. Export Chicago United's professional services program to all CRPC major corporations and other firms.

Result: The CU professional services compendium was sent to some 75 CRPC firms in conjunction with the advertisement of the 1981 Chicago Business Opportunity Fair. It is anticipated that the remaining CRPC firms will be contacted during 1981; therefore, this objective will be carried forward.

E. Develop a plan to help qualify potential minority firms for participation in the professional services program.

Result: It was anticipated that this objective will be addressed in summer 1981; therefore, it has been carried forward to 1981.

MINORITY BUSINESS IMPROVEMEMENT

1980 ACCOMPLISHMENTS

GOAL

TO ENCOURAGE AND AID IN THE GROWTH OF EXISTING MINORITY BUSINESSES AND IN THE DEVELOPMENT OF NEW MINORITY FIRMS AS FEASIBLE.

OBJECTIVES

A. To agressively promote the purchase of goods and services by Chicago United companies from minority firms, especially those associated with Chicago United related MESBICs and the Chicago Regional Purchasing Council.

Result: A study was conducted of the three Chicago United related MESBICs (AMOCO Venture Capital Company, Chicago Community Ventures, Inc. and Tower Ventures Inc.) including portfolio analysis and an interview with the senior executive of each MESBIC soliciting their recommendations for improving Chicago United purchases from their firms where feasible. The information gathered was ther reviewed and considered with the following two recommendations resulting:

> (1) Chicago United firms annually be alerted to the purchasing opportunities presented by the MESBIC companies and sales results be reported to the former as an aid to encourage their increasing their purchases from these firms; (2) MESBIC managers be encouraged to urge their companies to become fully participating members of the CRPC.

The Task Force continued its close cooperation with and support of the CRPC and its programs including the usual strong encouragement given to the promotion and participation in the Chicago Business Opportunity Fair.

B. To aid the Insurance Committee in its program to complete a feasibility study supporting the capitalization of a minority owned and operated property and casualty insurance company and to assist in the implementation of the company if such an enterprise is determined feasible.

Result: The feasibility study which is funded by the U.S. Department of Commerce's Minority Business Development Agency and managed by the National Insurance Association is progressing well. It will be completed on or before October 1, 1981.

Chicago United companies, through risk managers and financial advisers, have been involved in the project since its inception last year. The report will include the feasibility of Chicago United's support in the new property and casualty company in the following areas:

Commitments of specific dollar purchasing of direct placement and reinsurance.

Specific information about current P&C commercial placements.

Stated preferences as to what coverages will be placed and terms and conditions for such placements.

Interest in possible investment opportunities by CU member companies. A vehicle will be made available to enable CU companies to become investors in the new P&C company.

It is anticipated that the company will be actually capitalized and in business sometime in the first quarter of 1982.

C. To solicit from medium-sized minority companies their recommendations on how best major firms can be of assistance, and aggressively follow through on these recommendations as appropriate and feasible.

Result: A seminar for successful minority business enterprises, co-sponsored by the Task Force and the CRPC's Minority Business Sub-Council, was designed and conducted by James H. Lowry and Associates. A comprehensive report has been produced, the Executive Summary of which follows. The report's spring release and Task Force reorganization timing caused no follow-up to the report's recommendations to have yet taken place.

Prepared by
James H. Lowry and Associates

STRATEGIES FOR ASSISTING MINORITY BUSINESS IN THE CHICAGO AREA

FINAL REPORT

Chicago United

March 12, 1981

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Chicago, Illinois 60601
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CHAPTER 1

EXECUTIVE SUMMARY

BACKGROUND

Minority Business Enterprises (MBEs) have encountered innumerable barriers to entry into the economic mainstream of America. Most critical of these barriers have been MBEs' general lack of access to capital, capable managers and large growth markets. Despite these obstacles, Chicago has been able to spawn the most dynamic Minority Business Enterprise Development (MBED) sector in the United States. This success cannot, however, be solely attributed to the excellence of Chicago's minority entrepreneurs. It is partially due to the economic viability of the Midwest in general and Chicago in particular. More importantly, it is also a direct result of the willingness of certain members of Chicago's majority business community to work with MBEs.

Despite the fact that Chicago is the best market for MBED, economic parity is still a distant goal for the city's MBEs. In response to this reality two organizations dedicated to improving the MBED environment in Chicago have grown and prospered: Chicago United (CU) and the Chicago Regional Purchasing Council (CRPC). For the past seven to eight years both organizations have initiated, developed and managed programs to increase the economic interaction between MBEs and majority firms. These programs have had mixed results. CU and CRPC are no longer willing to accept mixed results. Both organizations have decided to revamp their programs to better leverage their resources and increase their impact on the MBED sector.

In order to more effectively integrate the ideas and feelings of the minority business community into the governing objectives and policies of CRPC, the Minority Business Sub-Council (MBSC) was formed. The MBSC is a sub-council of the Chicago Regional Purchasing Council (CRPC).. The MBSC was created to unite the various ethnic groups that comprise Chicago's minority business community. The organization is composed of blacks, Hispanics, Indians, Chinese, and women.

MSBC's primary goals are:

- To increase the amount of goods and services purchased from the minority business community by major companies in Chicago and the surrounding area;
- To sensitize the chief executive officers of Chicago area companies to the needs of the minority business community;
- To improve the skill levels of its members through executive development workshops; and
- To become more involved in its members' community through scholarship awards, fund raising for worthy causes, etc.

Before CU and CRPC embarked upon any new programs to assist minority business enterprises (MBEs), Joseph A. Williams, President of MBSC suggested that it would be appropriate to obtain better and more specific input from the MBEs that they were attempting to assist. It was felt that if the MBEs could better define exactly what they wanted and needed, CU and CRPC, with the help of MBSC, would be in a better position to deliver an improved product. Therefore, CU and CRPC's-MBSC decided to co-sponsor a seminar to facilitate MBE input and stimulate interaction with their client group. Through such a seminar, CU and MBSC expected to gain:

1. A clearer definition of the appropriate goals for MBED in Chicago;
2. A better understanding of the frustrations and problems of Chicago MBEs; and,
3. A cross-section of insights as to what actions CU firms might take to achieve point (1) and reduce point (2).

Organizing and managing such a seminar was viewed by CU and MBSC as a major engagement. Setting a time and place would not be difficult, but developing a meaningful agenda, attracting the big decision-makers from the MBED sector, managing a productive session, and documenting the findings for future action could present both organizations with problems. Due to the complexity of the task and its importance, CU and MBSC decided to reach out for assistance from a Chicago management consulting firm. James H. Lowry & Associates, an MBE specializing in minority business and economic development, was chosen to round out the seminar mangement team.

ORGANIZING THE SEMINAR

The seminar was developed over a five month period between June and October 31, 1980. Working back from the October 31 seminar date, the planning team had to resolve two major issues before they could move on to the logistical issues of timing, location and invitations. First, they had to determine who would represent the MBED viewpoint. Secondly, they had to determine what would be an effective methodology for stimulating discussion and analysis.

Resolving the first issue was a major challenge. The Chicago MBED community is not only diverse, but is quite extensive. The planning team reviewed and analyzed data on more than 1500 MBEs. After a series of discussions external to the team as well as internal, the planning team decided to invite approximately 152 MBE Chief Executive Officers. Two criteria determined the final list: (1) a successful track record; and (2) diverse industry representation. The first criterion was the most important. The committee felt that the most successful MBEs might not be able to explain the problems of MBEs any better than their peers, but had demonstrated an ability to overcome those problems. Also, CU members would be more responsive to voices that they already knew and respected.

Having defined the group that they wanted in attendance, the planning committee had to determine how to present and package the seminar so as to generate the largest and best response from this select group of MBEs. Despite and due to their successful track records, such individual's time is at a premium. Most of them will not attend this type of function unless they can see a bottom-line for their own firms or at least the MBED sector. With this reality in mind, the planning committee decided that it had to design an instrument that would accomplish three things:

1. Get the MBEs to attend;
2. Generate pre-seminar input; and
3. Form the basis for seminar discussions.

Based on previous work that James H. Lowry & Associates had done with CEOs in the MBED secto the planning committee decided on designing and distributing a detailed questionnaire. The questionnaire was developed in booklet form and built around the critical problem areas confronting MBEs:

1. Market Development;
2. Capital Formation; and
3. Management Development.

The questionnaires were distributed to prospective participants prior to the seminar so that they might appreciate the seriousness of the effort, and by filling it out provide a data base for the seminar itself. The strategy was successful.

PROFILE OF SEMINAR PARTICIPANTS

As was mentioned earlier, 152 MBEs were invited to participate in the seminar. Seventy-six, 50%, responded and fifty-four, 68%, attended. The profile of the MBE/CEOs in attendance contrast sharply with that of the average MBE. The latest Department of Commerce data on MBEs indicates that the average MBE only generates gross receipts of $75,000 per year. Seventy per cent of the CEOs participating represented MBEs generating sales in excess of $250,000 per year. Fifty-eight percent of the firms in attendance generate more than $500,000 per year.

The MBEs in attendance had not only been generating strong sales for the MBED sector, but had been doing so for more than five years. Additionally, they are major employers. Eighty-two per cent of the participants employe six or more people. Forty-two per cent employe sixteen or more full-time earners.

Most importantly, the attendees represented not only the top-flight managers in their respective industry groups, but also community and philanthropic leadership throughout Chicago. Among those in attendance were:

- Vince Cullers, President of Vince Cullers Advertising
- Leon Jackson, President of Urban Enterprises Corporation
- Lester H. McKeever, Jr., Partner of Washington, Pittman, & McKeever
- Alfred Leo Morris, President of Sengstacke
- Stanley W. Tate, Regional Director of the Minority Business Development Agency
- Cecil J. Troy, President and founder of Grove Fresh Distributors

Needless to say, the planning committee had designed and managed a conceptually strong questionnaire and seminar format, but it was the reponses and insights of these key individuals through the questionnaire and in the open seminar discussions that gave real meaning and import to the process.

MAJOR FINDINGS AND CONCLUSIONS

There has been a multiplicity of seminars in MBED over the past twenty years. What has differentiated the good ones from the bad ones was not only the degree of planning and the caliber of the participant, but also the activity that was generated by the discussion process. The key element in taking action based on such a process is documenting the process. Therefore, the planning committee was very careful to record and document the seminar findings. The major conclusions are summarized by category in the following paragraphs:

Market Development

- Although most of the seminar participants had done business with CU companies in the past, they were disappointed with the volume of business to date.
- MBEs want more assistance from CU companies in developing relationships with the CU companies' major suppliers.
- MBEs want more subcontracting opportunities with CU companies who are prime contractors with the Federal Government.

Capital Formation

- The MBEs present indicated their most pressing need to be adequate access to short-term working capital.
- The majority of MBEs want major corporations to invest in their companies.
- The vast majority of MBEs present did not work with one of Chicago's eight MESBICs and generally were very critical of them.

Management and Technical Assistance

- All of the MBEs present desired management and technical assistance.
- The top three priority areas in which they needed assistance were financial management, marketing, and general management consulting.
- Few of the MBEs have taken advantage of existing M&TA programs.

Seminar Evaluation

- After evaluating the seminar 66% of the participants felt it was worthwhile attending.
- Many others felt it could only be considered worthwhile if the CU companies acted swiftly on the recommendations that evolved from the seminar.

MAJOR RECOMMENDATIONS

The seminar participants did not stop with the analysis presented in the previous paragraphs. They went on to offer concise and targeted recommendations for action by CU and CRPC within each of the three problem areas, and their advice was not in the abstract context of MBED in Chicago. They made specific recommendations for organizational as well as procedural change by CU and CRPC to allow quicker progress in the three areas of concern. The following paragraphs summarize the seminar participants' suggestions:

Market Development

- Establish a buddy system between MBEs and CU companies.
- Aid expansion into new markets through acquisitions.
- Use minority firms in professional services.
- Assist MBEs in developing relationships with major suppliers and subsidiaries of CU companies.
- Use a creative approach in expanding business with MBEs.

Capital Formation

- Assist MBEs in establishing credit relationships with major suppliers and commercial banks.
- Directly invest capital in MBE companies.

Management and Technical Assistance

- Develop a brochure identifying and describing M&TA programs currently available in the public and private sectors.
- Develop and management loan program to provide M&TA to MBE companies.
- Support and participate in Minority Business Development Agency initiatives.

Internal Approach for CU Companies

- Seminar participants were concerned with the level of commitment from middle management in CU companies, and CEOs in monitoring corporate-wide minority purchasing goals. Consequently, they also recommended specific organizational/administrative changes that would enable CU companies to improve their MBED efforts. Briefly, they are to:
  - Directly involve CEOs in setting dollar goals in each purchasing category throughout the company.
  - Base the evaluation of the Vice President of Purchasing on the company-wide success of MBE purchasing programs.
  - Establish a system to air MBE companies' concerns about the level of support from CU companies.

RECOMMENDED NEXT STEPS

Overall, the MBEs present felt the seminar was a good beginning, primarily because it accomplished two critical objectives:

1. The MBEs were able to not only openly discuss their problems, frustrations, and needs regarding MBED in Chicago, but were also able to offer constructive criticisms and suggestions for change; and
2. These criticisms and recommendations were communicated to Chicago United through this report.

But, since another objective of the seminar was to elicit action form Chicago United companies, it is important that the progress made buring the seminar continue afterwards. MBEs attended the seminar expecting something different from their past experiences -- a seminar that would result in effective change through quick decisive action.

To maintain the momentum of the seminar and deliver what was initially promised, we recommend taking the following action within the next 30-60 days:

1. Present a copy of the report to the Co-chairman of each of the five (5) sub-committees which make up the Task Force on Minority Economic Development (TFMED) for their review and comment;

2. The comments of the Co-chairmen of TFMED should be summarized and passed on to the full TFMED;

3. The Task Force on Minority Economic Development should make the recommendation to adopt the report as a working document to the Executive Committee of Chicago United;

4. Meet with seminar planning team members to develop strategies for implementing recommendations that were adopted by the CU Board in the three primary problem areas:

   a. Market Development

   b. Capital Formation

   c. Managment and Technical Assistance

5. Present these strategies to MBEs who attended the seminar since they have played such a significant role throughout the entire project and they are the ones who will be ultimately affected by whatever action is or is not taken.

Taking these steps will help substantiate claims by CU companies that they are firmly committed to assisting MBEs. It would also lay the groundwork for a cooperative working relationship between minority companies and major corporations in Chicago with the hope that significant progress can be made toward improving MBED in the very near future.

CHICAGO UNITED

MINORITY BUSINESS DEVELOPMENT TASK FORCE

1981 OBJECTIVES

1981 GOALS

To increase purchases of goods and services from minority suppliers by major companies.

To increase the use of minority banks and savings and loan associations by major companies.

To increase the utilization of minority construction contractors and tradesmen in Chicago metropolitan construction projects.

To create new employment opportunities for minorities in the field of insurance through the fostering of competitive business opportunities, primarily with major corporations, and to develop a formalized education program to acquaint minorities with career opportunities in the field of insurance.

To aid minority professional service firms in the fields of architecture and engineering, law, accountancy, advertising and marketing, personnel/employment and management consulting in securing competitive opportunities for business from major corporations and government agencies.

To encourage and aid in the growth of existing minority businesses and in the development of new minority firms as feasible.

CHICAGO REGIONAL PURCHASING COUNCIL, INC.

GOAL

TO INCREASE PURCHASES OF GOODS AND SERVICES FROM MINORITY SUPPLIERS BY MAJOR CORPORATIONS.

OBJECTIVES

A. Complete certification of minority ownership of 150 listed minority businesses.

B. Sponsor one Executive Development Workshop for management personnel of minority businesses.

C. Publish a directory of certified, affiliate members of the CRPC.

D. Publish bi-monthly newsletter.

E. Increase corporate membership in CRPC by 15 corporations.

F. Develop in conjunction with the Purchasing Management Association of Chicago a purchasing training session for buyers in minority businesses.

BANKING COMMITTEE

GOAL

TO INCREASE THE USE OF MINORITY BANKS AND SAVINGS AND LOAN ASSOCIATIONS BY MAJOR COMPANIES.

OBJECTIVES

A. To increase by 10% the collective total business placed by CU and CRPC member companies with minority banks and savings and loan associations in 1981.

   - Set-up dollar goals in various areas such as operating accounts and credit lines.
   - Consolidate the treasury reporting for CU/CRPC companies.

B. To continue program efforts to increase the use of minority banks and savings and loans by CU/CRPC members, government and private sector organizations.

C. To coordinate CU/CRPC minority banking activities with the National Bankers Association.

D. To cooperate with other cities or regional purchasing councils in forming minority banking programs. The distribution of the "How To" Guide will be offered.

E. To conduct at least two seminars with company treasurers and financial groups.

F. To determine the feasibility of a big brother approach by assigning a Chicago United company treasurer to a small group of minority banks (one to three) to guide those specific banks in the marketing of their services.

CONSTRUCTION COMMITTEE

GOAL

TO INCREASE THE UTILIZATION OF MINORITY CONSTRUCTION CONTRACTORS AND TRADESMEN IN CHICAGO METROPOLITAN CONSTRUCTION PROJECTS.

OBJECTIVES

A. Develop a workable blueprint to relieve cash flow and bonding constraints through controlled construction project experiences, as laboratory experiments.

B. Seek the endorsement of these experiments, and the full cooperation of Chicago United Principals in the private sector, and of the State of Illinois Capital Development Board in the Public Sector, by their submitting specific construction project opportunities for use in the experiment.

C. Select appropriate project opportunities and establish control guidelines for use in the experiment, and secure agreement from user, general contractor (if applicable) and minority contractor to abide by the control guidelines.

D. Establish and implement project communication and reporting relationships to monitor progress and adherence to guidelines.

E. Review results, refine the guidelines and conclude contents of the ultimate working model.

F. Review results, refine the guidelines and conclude contents of the ultimate working model. This includes the development of procedures for determining utilization of the existing Model Program for Minority Contracting and the Minority Construction Contractor Directory.

G. Update Minority Contractors Directory.

INSURANCE COMMITTEE

GOAL

TO CREATE NEW EMPLOYMENT OPPORTUNITIES FOR MINORITIES IN THE FIELD OF INSURANCE THROUGH THE FOSTERING OF COMPETITIVE BUSINESS OPPORTUNITIES, PRIMARILY WITH MAJOR CORPORATIONS, AND TO DEVELOP A FORMALIZED EDUCATION PROGRAM TO ACQUAINT MINORITIES WITH CAREER OPPORTUNITIES IN THE FIELD OF INSURANCE.

OBJECTIVES

A. Increase the premium dollar volume of insurance purchased by CU/CRPC and other major corporations from minority insurance companies, independent agents and brokers to 5% of total 1981 premiums paid to all U.S. vendors and suppliers.

B. Export purchasing objective "A" to include non-CU/CRPC risk managers. Specifically, the membership of the Risk and Insurance Management Society (RIMS).

C. Expand and support education opportunities in the technical and insurance disciplines for minorities in the insurance industry and others interested in insurance careers.

D. Help expand the number of major insurance companies that will provide bonding and liability coverage at standard rates for minority contractors.

E. Develop a compendium of qualified minority insurance brokers with profiles and pertinent information on each firm for distribution to major corporations.

F. Expand the relationship between minority and majority insurance brokers to provide technical and management assistance in the development of new business opportunities for minorities.

G. Prepare a "how-to" guide for starting or improving a minority insurance program for major corporate distribution and use.

H. Support programs and proposals to resolve or ameliorate P&L personal and commercial insurance availability problems which impact adversely on neighborhood, commercial and residential rehabilitation and minority business development.

I. To provide assistance, advice and counsel toward the capitalization of a minority owned and operated property and liability insurance company through the resources of interested Chicago area MESBICs and other public and private investment sources.

J. To review on a semi-annual basis the performance of CU firms in accomplishing 1981's objectives.

PROFESSIONAL SERVICES COMMITTEE

GOAL

TO AID MINORITY PROFESSIONAL SERVICE FIRMS IN THE FIELDS OF ARCHITECTURE AND ENGINEERING, LAW, ACCOUNTANCY, ADVERTISING AND MARKETING, PERSONNEL/EMPLOYMENT AND MANAGEMENT CONSULTING IN SECURING COMPETITIVE OPPORTUNITIES FOR BUSINESS FROM MAJOR CORPORATIONS AND GOVERNMENT AGENCIES.

OBJECTIVES

A. Establish a realistic purchasing dollar volume objective for minority professional services.

B. Develop a model "How-to-Guide" for minority professional firm purchasing.

C. Export Chicago United's professional services program to all CRPC major corporations and other firms.

D. Update and publish by October, 1981, a new compendium to include any new qualified minority firms.

E. Continue to help qualify minority firms for participation in the professional services program.

MINORITY BUSINESS IMPROVEMENT

GOAL

TO ENCOURAGE AND AID IN THE GROWTH OF EXISTING MINORITY BUSINESSES AND IN THE DEVELOPMENT OF NEW MINORITY FIRMS AS FEASIBLE.

OBJECTIVES

A. To establish a committee responsible for meeting this area's objectives.

B. To aid the Insurance Committee in its program to complete a feasibility study supporting the capitalization of a minority owned and operated property and casualty insurance company and to assist in the implementation of the company if such an enterprise is determined feasible.

C. To aggressively promote the purchase of goods and services by Chicago United and other companies from Chicago United member's MESBICs' portfolio companies.

D. To develop and carry out appropriate action plans to implement the Lowry report's recommendations.

Mr. WASHINGTON. One last question.

Mr. Johnson, you proposed that the EEOC be the sole enforcement agency, I gather, right——

Mr. JOHNSON. Law enforcement dealing with past discrimination.

Mr. WASHINGTON. Well, the legal process in EEOC is rather cumbersome. Would you propose a swap and give the EEOC cease desist powers?

Mr. JOHNSON. Based upon past performance of that agency, I would not rush to promote cease and desist powers, no.

Mr. WASHINGTON. Well, there's a "kicker" [laughter] in exchange for making OFCCP nonretrospective in enforcement.

Mr. JOHNSON. But I don't think that makes OFCCP less aggressive in terms of getting results, getting increased opportunities.

Mr. WASHINGTON. What would be your opposition to giving the EEOC cease and desist powers?

Mr. JOHNSON. It would have to do with——

Mr. WASHINGTON. If there is a violation of public policy, clearly, why not permit EEOC cease and desist powers?

Mr. JOHNSON. My concern would deal with the law enforcement tools which they have at present. You suggested earlier the Commission's right to file a Commissioner's charge. So long as they have that opportunity and quick access to the judicial system, I believe, with temporary restraining orders, injunctions, et cetera, I believe——

Mr. WASHINGTON. Ad infinitum, time-consuming, costly. There is no such truncated, accelerated process by which the EEOC could move in and stop——

Mr. JOHNSON. Well, if you follow the history of the National Labor Relations Board, which has cease and desist powers, I think it takes a long perid of time for an agency to develop to the point where I would be willing, at least, to skip the judicial process and just put the cease and desist power directly with the agency. I don't think the EEOC is mature enough at this time to give it that kind of power.

Mr. WASHINGTON. In effect, you are saying the EEOC should negotiate, should talk, should do a lot of things, and ultimately go to the courts if necessary. But you don't want to give them the ultimate sanction which will make them be effective.

Mr. JOHNSON. I really wouldn't say they're ineffective in terms——

Mr. WASHINGTON. More effective.

Mr. JOHNSON. I think the threat of going to court and long-term and exensive litigation for the private sector is a very significant threat. I don't minimize that at all.

Mr. WASHINGTON. I have no further questions.

Mr. HAWKINS. Mr. Robinson and Mr. Johnson, we are thankful for your presentation. I again wish to echo what Mr. Washington has said. We regret that we have had to keep you around all morning, but perhaps all of us have learned a little bit today and we appreciate your contribution to the subject.

Mr. JOHNSON. Thank you.

Mr. ROBINSON. Thank you, Mr. Chairman.

Mr. HAWKINS. There are some final witnesses that were not scheduled but whose names have been added, who will represent the last panel.

In the meantime, may the Chair announce that we have had a request from some 17 witnesses who simply wish to file statements, ranging all the way from Eugene Barnes, to the 17th one, Dr. Boswell, whose names will be submitted for the record. We will keep the record of the committee open for 2 weeks for the filing of these statements by those who have indicated they would file statements.

The names of the witnesses are as follows:

Mr. Eugene Barnes, chairman of the board, CTA; Mr. James Stampley, president, Englewood Community Development Corp.; Attorney Zedrick Braden, president, Park Manor Neighbors Council; Mr. Vernon Jones, vice president, Park Manor Neighbors Council; Ms. Doris Royster, Englewood Community Group; Ms. Carol Mosley Braun, representative of the 24th Legislative District; Ms. Barbara Currie, representative, 24th Legislative District; Ms. Rose Geter, affirmative action director, Department of Children and Family Services.

Rev. Landis H. McAlpin, secretary of community relations, Chicago Firefighter's Union; Mary M. May, executive director, Accounters Community Center; Miss Lisa Fittko, Hyde Park Peace Council; Ms. Cleaophas Ingram, PTA and ESEA Advisory Council; Mr. Leroy E. Kennedy, National Urban League; Mr. Art Turnbull, Chattham Avalon Park Community Council; Barbara Cartwright, CAABSE Legislative Committee; Mr. Timuel Black, and Dr. Arnita Boswell.

The final panel will consist then of Miss Gail Bradshaw, representing Miss Joyce Tucker, manager of the Compliance Division, Illinois Department of Human Rights; Miss Consuelo M. Williams, president, International Women's Economic Development Corp.; and Ms. Audrey Denecke, of the Midwest Women's Center. Will those witnesses be seated.

Miss Bradshaw, you're the first one called, so we will hear from you first, listen to the other two witnesses, and then propound whatever questions are to be asked.

STATEMENT OF GAIL M. BRADSHAW, MANAGER, COMPLIANCE DIVISION, ILLINOIS DEPARTMENT OF HUMAN RIGHTS

Ms. BRADSHAW. Thank you very much, Congressman Hawkins.

I am making this presentation on behalf of the director of the Illinois Department of Human Rights, Miss Joyce Tucker, who could not be here today. We are very desirous that the position of the department be heard on the issues of enforcement of affirmative action and equal employment opportunity.

This presentation, I believe, unlike some of the others presented here this morning, is very specific in nature. Our presentation reflects our concern with the impact of unlawful discrimination and the overall attack on affirmative action and equal employment opportunity efforts and programs.

The Illinois Department of Human Rights is a State agency that deals with all aspects of discrimination, be it in the areas of employment, housing, access to financial credit, or public accommodation. Discrimination is a devastating experience. It is one that subjects an individual to personal indignities, and no matter how often it happens to an individual, it is something that the individuals does not and should not get used to. It provokes strong emotion and sometimes violent consequences.

I think before I get into the meat of my comments, I have to say that in order to understand affirmative action and equal employment opportunity, you have to understand why it was necessary in the first place. Affirmative action, as a concept, as a practice, was intended to correct the vestiges of past discriminations. What that means is that some wrong occurred in the past that made it necessary to have something happen in the present to remedy the lingering injustice.

Affirmative action is an attempt to allow minorities the opportunity to play catch-up. It is based on the theory that at some point in our future the principles of equal employment opportunity can take over.

Simply explained, equal employment opportunity means nondiscrimination. It means a total lack of color consciousness. The hope for phasing out affirmative action programs and replacing them with EEO programs presupposes the fact that something isn't going to be done in the present to build up future vestiges of discrimination that have to be overcome. That this will not happen is unlikely.

Consequently, there is every reason to believe that affirmative action must continue to be mandated in order that equal employment opportunity will one day be a meaningful reality. Because of the history of the practice of discrimination, out of necessity, affirmative action cannot be color blind. Why? Because you can't have a color blind solution to a problem that is very much color conscious.

Most past and present discrimination in the United States, in every facet of life, has been based upon a conscious effort to prevent or stifle the achievement, advancement, and competition of blacks, other minorities, and women for whatever insane reasons.

For those of you who ask me what my views are on reverse discrimination, I believe there is no such thing. In order for there to be such a thing called reverse discrimination, the persons who were formerly discriminated against would have to somehow come into power and themselves do the discriminating.

We don't see that this has happened. Frankly, I don't see that it is going to happen in the very near future.

Is affirmative action discrimination? Yes, it is. I don't think there is anyone who won't admit that affirmative action does call attention to differences, and does make distinctions and certain decisions based upon those differences. That is what discrimination means.

Is it unlawful? No; at least it should not be. The reason that it should not be unlawful discrimination—even though technically speaking it is discrimination—is because of the fact there is no malice or ill will, a forethought intended by affirmative action programs—or let me qualify that; there should not be.

Affirmative action is mandated for the overriding good and benefit to society. Affirmative action is recognizing that certain groups historically have been systematically, through no fault of their own, denied equal opportunities and access to that life, liberty, and pursuit of happiness that we always hear about.

I would like to use an analogy that might help to clarify this point. Take, for instance, the patient that comes to the doctor with breast cancer. In order to treat that condition, you have to, No. 1, recognize the fact that the person does have cancer. You can't just treat the pain or the symptoms of cancer. You have to acknowledge the fact that it is cancer that you want to treat.

Now, in treating the cancer, the patient has to undergo certain types of treatments that might cause certain side effects. For instance, the hair might fall out, or the patient may become nauseous as a result of this treatment. But we all realize that the hair wasn't the problem, although the hair has fallen out, and the the stomach wasn't the problem, although the stomach is becoming upset. But cancer is the problem and that we are treating the cancer.

To get a healthy person, to get a healthy body, certain parts of that body have to be sacrificed and have to suffer for the overriding good effect of the treatment, which is the continued survival of the patient.

Thus, the treatment is affirmative action—to correct the cancerous and unhealthy American society which resulted from past discriminations and for which we must resort to the sometimes uncomfortable but properly prescribed use of action programs. Affirmative action is necessary to correct past injustices, maintain new progress, and insure future successes if there are to be any.

Thank you very much.

Mr. HAWKINS. Thank you.

Mrs. Williams?

STATEMENT OF CONSUELO M. WILLIAMS, PRESIDENT, THE INTERNATIONAL WOMEN'S ECONOMIC DEVELOPMENT CORP.

Ms. WILLIAMS. I want to particularly thank you for including us at this time on the committee's schedule today, and I will certainly be brief.

I am Consuelo Williams, president of the International Women's Economic Development Corp., an organization of some 100 midwestern women headquartered in the First Congressional District here in Chicago. Our primary focus is the economic liberation of black communities which cannot and will not occur without raising the living standards of black women.

We know the statistical litany by heart. Many of these statistics you have been listening to all day and I will not repeat all of them. However, more than 65 percent of minority women—and we do not confuse white women within this nebulous term "minority"—are in the service sector, with almost one-half of those household workers.

We know that we are disproportionately the sole head of households and too often the only adult financial support for our children. We also know it is a dangerous myth that through affirmative action programs we are taking jobs from our men—a myth that is perpetuated to drive a deeper wedge between us and our men, thus interfering with our ability to increase the number of well-founded, two-headed black households.

Once black women do arrive on the job, there are indicators that we are more subject to sexual harassment than any other group. At least black women have been compelled to file a greater number of lawsuits in this area than other women. Why would this be? For one, we continue to suffer under the stereotypes of being more sexually available; and another, with more mouths to feed alone, we are the most dependent on our jobs, an ironic twist since our jobs are the lowest paying.

Please note that even as professionals black women are underrepresented in higher paying industries, and are missing from the ranks of management. That is why our organization is an amalgam of black women of all income levels, varying educational backgrounds, and all ages.

We know we share instincts for building strong families and strong communities. Our history and, yes, current experience, prove that. Thus it is the economic environment which must be improved to allow us to realize that goal.

Black women have always worked and worked because the black family required that for survival. To continue to build partnerships with our men in this struggle, the following steps need be taken immediately:

First, existing equal employment opportunity laws must be enforced with vigor, and employers must be placed on notice that such will be the case. This includes providing adequate staffing to handle backlogs of grievances.

Second, current efforts to declare affirmative action efforts unconstitutional must be counteracted, as the statistics prove a historical pattern of discrimination which will not be overcome if employers are left to their own devices.

Third, women must be seen as they truly are—intelligent human beings of value to the productivity of the workplace, not toys, not "gofers," not brainless decorations. We may not be able to legislate humanism, but we can begin to change stereotypical thinking by requiring that affirmative action policy include language that encourages supervisors and male coworkers to adhere to strictly professional standards of communications with female employees.

This includes appropriate promotions and opportunities to managerial positions when qualified, as well as the elimination of sexual and/or racial harassment.

Fourth, black women must be granted the same public encouragement as business owners, as has been accorded other minority groups and white women. We, too, are potential employers; yet we come late to the era of minority business enterprise. We insist that the Reagan administration announce a strong policy on minority business in general, and that we at the community level have an official and effective role to play in the implementation of enterprise zone legislation.

Fifth and finally, we at IWEDC add our firm resolve to the efforts to extend the voting rights bill of 1965. We recognize the threat of losing it or having it watered down. We know that it is the instrument through which we could elect representatives such as these who have come to us today, persons who will come into our community to listen and through whom we may be heard in the Halls of Congress.

On behalf of the International Women's Economic Development Corp., I thank you.

Mr. HAWKINS. Thank you.

Ms. Denecke.

STATEMENT OF AUDREY DENECKE, MIDWEST WOMEN'S CENTER

Ms. DENECKE. My name is Audrey Denecke of the Midwest Women's Center. I am the director of the women's preapprenticeship program and a member of the Youth Committee of the Governor of Illinois Employment and Training Council. Our organization is also a member of the Illinois Coalition of Women's Employment.

I wanted to make one brief point, or actually one point that has two subparts. Since Owen Johnson from Continental Bank referenced our organization as an organization that they sponsored in the model employment and training program, and seemed to allude, at least to me, that that kind of model training program superseded the need for affirmative action, I wanted to clarify the position of our center on that issue.

We would commend the Chicago Alliance of Business and the Continental Bank for sponsoring the many and diverse model training programs through their bank, and in particular our program for training women in auto mechanics. We would also recommend corporations to implement similar types of programs. However, we don't see this happening in any massive way in the private sector.

Our program was very limited in scope. We were able to have 15 women trained through a local retail organization. That's a very small number of women, given the massive unemployment for women in this city.

We would strongly support, second, the need for the maintenance of the enforcement provisions of OFCCP. The center has been active in the employment sector for approximately 5 years, and at that time 5 years ago we could not even get meetings with unions or contractor associations. Now, with the 1978 regulations in place, and specific goals and timetables for women, we have seen some limited movement toward affirmative action for women and, in particular, we have seen some strong action on the part of OFCCP to increase the number of women being hired by contractors, but there is also a need within OFCCP for more staffing so that additional onsite monitoring can be done. Presently, only a very small percentage of contractors that have Federal contracts can be monitored, and we have been told by staff that many of those reports just sit on desks and never get reviewed. So we have a concern that OFCCP be given the funding and staffing that they need to do effective enforcement and, if anything, the goals for women need to be increased and that enforcement needs to be increased.

Well, it is true that there is a need for many model employment and training programs to demonstrate, No. 1, that women are capable of doing these positions, and to also provide models for employers and contractors that wish to see more women employed by them. That alone will not fill the need for increased numbers of women in the work force.

So that briefly is what I would like to say today, while it is fresh in everyone's mind and before that gets lost in the record some place.

So just very strongly, I would underline all the statements that were made by the women's panel. We are in full support of the positions taken by the members of the women's panel. But in particular, employment and training programs alone will not do the job.

Thank you.

Mr. **HAWKINS**. I think you touched on a very sensitive area. It seems many individuals are saying that if you just get rid of affirmative action and get rid of the Government and the private sector intervention, do all of these things, that training and employment programs are going to be sponsored and everybody is going to get jobs and everybody is going to be prosperous and everybody is going to be middle class and everything is going to be rosy. It seems a condition precedent to something that is not likely to happen, or hasn't happened in the past.

I think your point is well taken. As I understand it, the training and employment program to which you have referred and which has previously been referred to might not have happened if we had not had affirmative action, and why should it happen—if it's going to happen, why shouldn't it happen anyway? Who is to keep anyone from going ahead with it, with or without affirmative action.

Ms. **DENECKE**. The sad effect, though, is that so many of the employment and training programs that were sponsored under CETA will be gone by October, so many of the community-based organizations that were involved in employment and training will no longer be able to provide that to their community residents. So even those opportunities are going to be cut back and limited. So it seems like on all fronts we are losing ground.

Mr. **HAWKINS**. From your organization's point of view, do you see any such alternative being presented at the same time something is being dismantled, any alternative being presented in its place?

Ms. **DENECKE**. No; because even on the State level the Federal moneys that are funneled through the State are being cut back, and the number of model training programs that the State will be able to sponsor are going to be cut back. I see nothing that is replacing either Federal or State initiatives.

Mr. **HAWKINS**. Miss Williams, in your statement you made one remark that I didn't quite understand. Maybe I misunderstood. You said something about black women taking jobs from our men; did I understand that to be your statement?

Ms. **WILLIAMS**. That is a comment that we hear constantly.

Mr. **HAWKINS**. Do you agree with that?

Ms. **WILLIAMS**. Absolutely not.

Mr. **HAWKINS**. I thought you were stating that as a fact.

Ms. **WILLIAMS**. By all means, let me clarify that. The statistics are very clear, that it gets somewhat complex because the economy itself is changing from an industrial base to a service base. That in and of itself raises a lot of issues in terms of just basic economics, the export-import theory, and as I said, it gets very complex.

But the fact is there are no indicators that, in fact, black women are replacing black men or anyone else really in the job force.

Mr. HAWKINS. You mentioned the enterprise zone legislation. Are you supporting the enterprise zone legislation?

Ms. WILLIAMS. That is a difficult——

Mr. HAWKINS. With or without conditions.

Ms. WILLIAMS. No; not without conditions. My hestitation to answer that is that I have been involved as a member of the Illinois Employment and Training Council Economic Development and Jobs Committee in addressing our State legislation here introduced by State Senator Totten. I have probably been one of those most adamently opposed to that legislation.

On the other hand, I tend to be somewhat of a pragmatic person in that if there are resources that can be utilized to improve the conditions of our communities, then I am in favor of those being designed in such a way that we can, in fact, have some input and make some determinations.

One of the critical concerns, for instance, is in the face of reduced funds available for training. What is it about enterprise zones that is going to make our inner-city communities attractive to private industry, particularly since people will have to be trained and employed for specific kinds of jobs.

Mr. HAWKINS. Is it really your position that you have an open mind with respect to the enterprise zone, depending on the way it is crafted, in order to insure that certain protections be granted in terms of black business and black employment, black training programs and so forth?

Ms. WILLIAMS. That would be the most accurate description of my attitude.

Mr. HAWKINS. Thank you.

Mr. Washington?

Mr. WASHINGTON. Just two brief questions.

Recently Phyllis Schafly testified in opposing the ERA that equal rights for women was a threat to the family; yet all of you suggest that equal rights should be enforced.

Would you want to go on record in reference to Mrs. Schafly's position?

Ms. WILLIAMS. Let IWEDC go on record as being fully in favor of the ratification of the Equal Rights Amendment. In fact, with the number of women who are the support of their families, either solely or in conjunction with their husbands, there is no way we can accept that argument.

Ms. DENECKE. I would also say that the Midwest Women's Center has been working long and hard on the issue of the Equal Rights Amendment and would support it and sees that as being no threat to families. In fact, when women can provide for their families adequately and are fulfilled in the work that they are doing, there are happier families as a result of that.

Mr. WASHINGTON. Miss Williams, the EEOC sexual harassment guidelines have been used as an example by the Reagan people of the EEOC overstepping its legislative mandate. Yet you maintain there are still sexual harassment problems in the workshop.

What would be your comment to the Reagan position?

Ms. **Williams**. I could only reiterate what is contained in our statement, that it is a phenomenon that continues to exist, that it is another obstacle toward the improvement of working conditions for women, in that a great number of women choose, as opposed to fighting back, as opposed to filing lawsuits, a great number of women try to seek other employment or to quit their jobs in the first place. They feel they have no recourse.

In too many instances, for instance, women themselves have been challenged, accused of bringing on this kind of action. They just feel they don't have very much recourse. So the numbers of cases that we are aware of is probably minimal in comparison to the actual existence of the problem in society.

Mr. **Washington**. No further questions, Mr. Chairman.

Mr. **Hawkins**. I again would like to thank the witnesses for their patience and for their very excellent presentation.

That concludes the number of scheduled witnesses. We have several statements that have been suggested for filing for the record, including one from Miss Blackwell, Mr. Stampley, Mr. Braden, and Mrs. Perkins. Those will be entered in the record, without objection.

The subcommittee would like to express its appreciation to Mr. Washington and to his staff for their very generous cooperation and attention to myself and to the staff traveling with us to Chicago.

We also would like to express our appreciation to the University of Chicago and finally to a very understanding audience that stayed with us all day and was very attentive.

This concludes the hearing in Chicago. The next hearing will be in Los Angeles, Calif. the day after tomorrow. Mr. Washington, we invite you to come to the beautiful, sun-kissed beauties of the west coast, the beautiful palm trees, the balmy breezes, and the Pacific Ocean.

Mr. **Washington**. I wish to say just one thing. The chairman ordered me to be there. [Laughter.]

Mr. **Hawkins**. Thank you very much.

[Whereupon, at 2:15 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Chicago Heights East-Side Neighborhood
Economic Development Corp. (Not-for-Profit),
Chicago Heights, Ill., August 11, 1981.

Subcommittee on Employment Opportunities,
Washington Senate Committee, Chicago, Ill.

Dear Sirs: The Chicago Heights East-Side Neighborhood Economic Development Corporation wishes to provide testimony asking that the Affirmative Act be strengthened as it stands, and that no weakening additions or amendments be made. We feel and are assured that its existence and the enforcement powers available through it has served as a deterrent to possible violent activities for many destraught persons under continued, unconstitutional, and nonrepresentative local governmental assistance.

Ours is a neighborhood where peaceful petition for redress of grievances and requests for improvement, utilizing available federal programs, have not received approval or opportunity by a local government unwilling to obey the law. A neighborhood of the highest suburban concentrations of public housing, low and no-income families, with the highest concentrations of hazardous, toxic and chemical industrial locations, huge sustained unemployment, and concentrations of elderly and handicapped homeowners, have not been able to achieve access to programs designed to alleviate their problems because the local government is crime syndicate controlled. The local government refuses to apply for positive programs so that it can continue to have available a market for illicit drugs and alcohol for those despondent under these continued conditions.

The fact that the Affirmative Action Act exists as a possible outlet for neighborhood residents has fostered at least some local governmental employment. Applications by the local government for public works and other programs have been made for areas outside our neighborhood of need, but since the governmental agencies are aware that these applications do not meet Affirmative Action guidelines and other regulatory requirements, they have denied them.

The Affirmative Action Act and other regulatory requirements of need have been the basis for a neighborhood appeal for housing rehabilitation assistance under the Housing and Community Development Act, and did receive an affirmative positive review which granted $100,000.00 for improvement of elderly owned housing in the neighborhood when the city refused to apply.

Thanking you in advance for your time and consideration.

Sincerely,

ELIZABETH BLACKWELL,
Executive Vice-President.

ENGLEWOOD COMMUNITY DEVELOPMENT CORP.,
Chicago, Ill., August 10, 1981.

To Whom It May Concern: The Labor Market with all its inequities, would be in worse shape, if Equal Employment Opportunity and Affirmative Action Programs are phased out. Blacks, Hispanics and other so-called minorities would suffer the most. Inflation with the high rate of unemployment in our country must be checked.

We cannot and must not allow another war, for the creation of jobs for all employable people. Without Equal Employment Opportunity and Affirmative Action Programs a major depression is eminent.

Community leaders, block clubs, organizations, clergy and memberships, the private and business sectors; in indigent Englewood through the Englewood Community Solidarity Committee urged that I act as spokes-person for them.

We trust serious thought and consideration will be given this request to not eliminate (EEOC).

Sincerely,

JAMES O. STAMPLEY
President.

POSITION PAPER ON AFFIRMATIVE ACTION AND ENFORCEMENT OF EQUAL EMPLOYMENT OPPORTUNITY LAWS

Park Manor Neighbors Community Council favors expanding enforcement efforts in the area of affirmative action in the work place. We feel that law enforcement at every level of government should be employed to guarantee every American a job based on objective qualifications. We urge that every effort be made to eliminate considerations of race, color or religious preference in the field of employment opportunities.

Park Manor Neighbors Community Council opposes efforts to change the dollar requirement for affirmative action enforcement from $50,000.00 to $500,000.00. We interpret this as a subterfuge to remove governmental enforcement of affirmative action in the area of greatest job expansion in the next ten years. Our information discloses that the greatest expansion of jobs will be in businesses involved in contracts in amounts under $500,000.00, which means that without affirmative action enforcement in this category, there will be no guarantee of fairness in job placement for persons hired.

On the contrary, the federal government should be exploring new horizons for guaranteeing civil and political rights. It should be setting an example for the world in the field of human relations rather than exploring paths of political and social denial.

Park Manor Neighbors Community Council urges the congress and the president to set an example of good citizenship and concern for all Americans to follow.

Respectfully submitted.

ZEDRICK T. BRADEN, Jr.,
President.

Chicago Heights, Ill., August 11, 1981.

Subcommittee on Employment Opportunities,
Washington Senate Committee, Chicago, Ill.

Dear Sirs: I personally would like to testify that the Affirmative Action Act has helped to secure jobs for minorities and other nationalities, regardless of race, creed, color, sex, or religion.

As a Black woman, I was deliberately looked over for a promotion even though I was qualified for the position. Nor did I receive an interview. Because of the Affirmative Action Act some recourse was able to be taken with the help of my Union. If changes are made to weaken the positive effects of the Affirmative Action Act, these abuses will increase and persist. If the Affirmative Action Act is not strengthened we will all be back to where we were before the Civil Rights movement. The enforcement powers available through it has served to help prevent violent activities.

Thanking you in advance for your time, and hoped for consideration.

Sincerely,

Doris Perkins.

The Coalition for United Community Action—ORTC, Inc.,
Chicago, Ill., August 11, 1981.

Hon. Harold Washington,
Congressman, 1st District,
State of Illinois.

Dear Sir: Attached, pleased find an official copy of our testimony on Affirmative Action presented today before the House Subcommittee on Employment Opportunities.

Sincerely,

Carl W. Latimer,
Executive Director.

Mr. Chairman, thank you for this opportunity to share with you our views and experience in this vital area.

The Coalition for United Community Action was born twelve years ago as a direct result of a grassroots attempt to initiate and enforce a program of what we now all call affirmative action, specifically in the field of construction. This field was chosen because it has the greatest impact on the environment in which we all alive and work, it offers the highest uniform incomes of any blue-collar industry and through father and son traditions was the industry from which minorities were most systematically excluded.

In view of this institutional backgroud and the millions of tax dollars that were being spent on new construction in our city, we were convinced that "business as usual" had to change and we set out to change it. Through demonstrations we brought labor, management, and the Government to the table and forced the original Chicago plan.

Our experience over the past twelve years has shown us the importance of the existence of a Government-sponsored affirmative action program. This program, especially Executive Order 11246 and its rejuvenation by the Carter administration, has created an atmosphere in which we and other groups with whom we work closely have been able to develop and foster voluntary programs uniting labor, management, and the community to bring minorities and women into the construction trades. These activities have broadened beyond Government-sponsored projects into the private sector.

Mr. Chairman, our experience has shown us that two critical elements must be present for programs such as ours to succeed. We are convinced that the longevity, depth and current growth of our program is due to the voluntary nature of our relations with all of the critical parties: labor, management, Government, and private sponsors. Over these last twelve years we have developed to the point where the institutional leadership of both the unions and the contractors now join with us as cosponsors of programs and funding. This insures the follow-through necessary for success because they are not "advisors"—they are participants.

However, realistically, I have no doubt that without the existence of Federal affirmative action orders and legislation, no program such as I am describing would have been agreed to, let alone implemented. It was in the face of possible additional Government action and the imposition of programs in this industry elsewhere that we were able to offer an alternative in which all the parties could have a voice and substitute systemic order for Government order. We have been able to operate under the banner of "from protest to programs" (our motto) in no small way because the alternative of Government action that might be far more immediate and arbitary existed.

Therefore, the Reagan Administration's efforts to diminish the effectiveness of affirmative action, Sen. Hatch's promises to kill it and all other such statements to the press can only serve to undermine the enthusiasm with which labor and management approach participation in programs like ours. We can only be an attractive alternative in the extistence of at least one other alternative. There is no sound from one hand clapping.

Further, Mr. Chairman, our experience clearly has shown us that the ultimate key to successful affirmative action is the adequate preparation of candidates for positions. If there are no qualified applicants, no program can get them employed. Therefore, I urge the greatest effort possible to maintain those programs that underwrite the expense of recruiting and training disadvantaged minorities for long-term employment in those positions affirmative action is designed to open for them.

I thank you again for this opportunity to briefly share our views with you and remain available to you and your committee to assist either here or in Washington in any way you may feel is helpful.

ILLINOIS COMMISSION ON THE STATUS OF WOMEN,
Springfield, Ill., August 17, 1981.

EDMOND COOKE,
Subcommittee on Employment Opportunities,
House of Representatives, Washington, D.C.

DEAR MR. COOKE: I ws out of the state on August 11 and unable to attend the U.S. House of Representatives Subcommittee on Employment Opportunities hearing in Chicago. I am submitting written testimony and would like it to be included with the record of that hearing. Thank you.

Sincerely,

SUSAN CATANIA,
Chairwoman.

TESTIMONY BY SUSAN CATANIA, ILLINOIS STATE REPRESENTATIVE AND CHAIRWOMAN OF THE ILLINOIS COMMISSION ON THE STATUS OF WOMEN

Under the statute creating the Illinois Commission on the Status of Women, the Commission is empowered to "survey activity in the area of the Status of Women carried on by any commission, agency or department of the federal government or state or any private organization or association and may cooperate with any such body in conducting investigations and studies." We also make recommendations for constructive action concerning women as workers. At our July 8, 1981, meeting, we voted to oppose any weakening of the Office of Federal Contract Compliance Programs.

The Commission has a long record of support for affirmative action and equal employment opportunity, and our annual reports have documented the many forms of discrimination women have encountered and still continue to face. In 1969, we urged the Illinois State Employment Service to increase its efforts to encourage women to apply for any jobs for which they were qualified and urged that employment and promotion policies of the State of Illinois be reviewed to ensure that the State was leading the way toward establishment of job criteria based only on ability. We have continued to support Equal Pay for Equal Work laws and have encouraged programs to help women build careers.

Our Education Committee reports have shown that discrimination against women faculty and civil service employees continues in higher education institutions. Employment hearings and surveys since 1972 have shown that discrimination at colleges and universities exists because of custom and administrative attitudes and that women are paid less than men with the same education. Since we first began collecting data in 1972, the situation has not changed substantially.

In 1974, the Commission recommended: amendment of the Illinois Fair Employment Practices Act to provide initiatory powers for the Fair Employment Practices Commission (now merged into the Illinois Department of Human Rights), to expand FEPC jurisdiction from companies with 25 or more employees down to companies with 15 or more employees and to permit the FEPC to accept class action charges filed on behalf of specifically defined classes of individuals by interested, responsible organizations; implementation of the 1970 Illinois State Constitution, Article I, Sections 17 and 18, as they relate to prohibition of sex discrimination (specifically, "All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of any employer or in the sale or rental of property"). In 1975 and 1976, our Legislative Action Committee introduced 52 bills to make 93 changes to remove sex-discriminatory language from the Illinois Statutes.

A survey of the literature and testimony from our Labor Union Women Committee's June 26, 1980, hearing on the wage gap between women and men showed that most women work because of economic need. Therefore their income plays a significant part in their own and their families' well-being. Although the percentage of women entering the workforce (17 percent in 1940, 47 percent in 1977) increased, between 1955 and 1980 the median income of women employed full time decreased from 64 percent of the median income of white males to 59 percent. In 1977, female unemployment was 50 percent higher than male unemployment, and women tended to remain unemployed for longer periods of time than white males.

A representative from the Illinois Auditor General's Office told the Commission, at its October 8, 1980, meeting, that the status of women in the Illinois workforce did not improve significantly between 1950 and 1970, and U.S. Department of Labor updates show no significant improvement for women since 1970. At present, nearly 90 percent of all women work for pay at some period during their lives. The wage gap has consequences that reach beyond the paycheck itself. Since fringe benefits such as life insurance and pension plans are based on salary, the wage gap has lifelong implications for the wage earner and her family.

Equal opportunity and affirmative action are necessary steps toward eradicating discrimination against people—male or female. These programs can make a difference. In 1973, I sponsored an amendment to the Regional Transportation Authority requiring affirmative action in hiring and promotion; until that time there had been no women bus drivers in Chicago.

We cannot stress too strongly that the elements crucial to OFCCP's having an effective enforcement program are: 1) retention of Executive Order 11246, as amended; 2) retention of goals and timetables in affirmative action plans to measure compliance; 3) no decreased coverage of contractors; 4) continued authorization of the debarment sanction and of back pay and other retrospective relief requirements; 5) compliance with outstanding court orders governing OFCCP's enforcement efforts.

Tax money should not be used to fund contracts with employers who discriminate, and employees have a right to expect a workplace free from harassment and discrimination. An attempt to weaken these protections is certainly an undermining of the American ideals of equal opportunity and freedom from persecution.

CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY,
Chicago, Ill., August 11, 1981.

Mr. EDWARD COOKE,
Employment Opportunities Subcommittee,
House Education and Labor Committee,
Washington, D.C.

DEAR MR. COOKE: I have enclosed the Chicago Association of Commerce and Industry's Comments on the Office of Federal Contract Compliance Programs.

The enclosed comments expressly reaffirms C.A.C.I. support of Equal Employment Opportunity and the concept of Affirmative Action. Also, comments directed at the OFCCP proposed regulations are to further our position and focus on supporting and suggesting changes to reduce the compliance burden on government contractors.

Thank you for your time, and if we can be of any further assistance to you, please contact Bill Price, Director, Governmental Affairs, CACI.

Sincerely,

SAMUEL R. MITCHELL,
Chief Executive Officer.

TESTIMONY OF SAMUEL R. MITCHELL, CHIEF EXECUTIVE OFFICER, CHICAGO ASSOCIATION OF COMMERCE & INDUSTRY

The Chicago Association of Commerce and Industry (CACI) appreciates the opportunity to comment provided by this forum. CACI is a voluntary organization of business and professional leaders working together to promote the commercial and industrial growth of Metropolitan Chicago and to foster civic improvements that benefit the general welfare of all who live and work in the area. CACI is in its 77th year of operation as the principal representative of the Chicago area business and industrial community and represents 6500 business and 1600 individual members, who employ over 1.2 milion workers.

CACI POSITION

The Equal Employment Opportunity Commission is, and clearly should be, the agency primarily concerned with the enforcement of the anti-discrimination laws. It has satutory authority, experience and expertise with regard to complaint processing, conciliation and litigation of claims of past and present discrimination by employers. CACI believes the EEOC's role in this area should be enhanced by removing such activities from other less experienced agencies and concentrating them at the EEOC. However, certain modifications of the EEOC's stance toward case processing are needed to make it more effective. Additionally, EEOC's guidelines in the areas of testing and sexual harassment, and prospective guidelines on job evaluation systems must be re-examined because of their overly broad and unduly burdensome nature. Finally, the EEOC must re-evaluate its position with regard to the economically unviable "comparable worth" theory.

I. EEOC case processing

Significant improvements in case processing have been made at the EEOC in the last several years. These improvements occurred due to institution of the Rapid Charge Processing System. The system concentrates the efforts of the field offices on the speedy investigation and resolution, by mutual settlement, if possible, of the individual harm alleged by a party charging discrimination. Cases of "class" or "systemic" discrimination generally must be referred to EEOC Headquarters for consideration and processing, or may, in certain defined instances, be handled by field offices under the Early Litigation Identification program. For a period of time, this system was operating with a high degree of success to eliminate EEOC's tremendous charge backlog.

EEOC's existing backlog was due to its treatment of each charge as a "class" charge requiring a time-consuming, wide-ranging investigation. Rapid Charge Processing was designed to eliminate such unwarranted expansion of individual charges by making "class" investigations subject to prior review, by EEOC Headquarters in most cases. Unfortunately, EEOC field offices seem to be returning to their old case processing methods, and are again utilizing many individual charges as vehicles to launch broad "class" investigations. As a result, it is possible that EEOC will be saddled with a new large backlog of cases.

Adding to a backlog is the EEOC's assertion of jurisdiction over cases that are clearly untimely. For unfathomable reasons, in light of its current problems in keeping up with the flood of charges, the EEOC has deliberately misinterpreted the Supreme Court's holding in *Mohasco* v. *Silver*, 100 S. Ct. 2486 (1980), and has taken the position, in Interim Procedural Regulations, 45 Fed. Reg. 81039, (December 9, 1980), that a charge is timely filed within 300 days in states with deferral agencies, even if no charge was timely filed with that deferral agency. Thus, if one lives in a state with a deferral agency, one has 300 days to make an initial charge of discrimination under Federal law; if one has the misfortune to reside in a state without such an agency, one is limited to the statutory 180 days. The absurd and unfair result of this position is a fluctuating limitations period in Title VII cases; a flood of litigation seems certain to result from this EEOC position.

An important criticism directed at the Rapid Charge Processing system is of the extremely heavy pressure placed upon respondents to settle cases—even clearly non-meritorious cases. This pressure apparently exists due to the EEOC's evaluation of the performance of case processing personnel on the basis of the number of charges quickly settled, rather than charges appropriately resolved.

The problems can be rectified easily, through a set of internal directives to the field offices. These directives should emphasis that the appropriate resolution of cases, rather than "getting the Charging Party something" will be rewarded and that plainly non-meritorious cases be dismissed without a lengthy investigation or conciliation process; should recall the goals and methods of Rapid Charge Processing, including fact-to-face fact finding, to field personnel, and place decisions regarding the pursuit of "class" investigations where they belong—at the EEOC National Headquarters; and should withdraw the timeliness regulations asserting jurisdiction where case law and its own statute would find none.

II. EEOC guidelines

The technical activities of the EEOC in issuing guidelines in several areas of Title VII law requires closer analysis. Testing and job evaluation systems have been areas of continuing concern to the EEOC. The Uniform Guidelines on Employee Selection

Procedures, 29 C.F.R. Part 1607 (1978), were jointly promulgated, after much delay, by EEOC and other agencies. The intent of the Guidelines was, or should have been, to assist employers in designing legally permissible, yet effective, testing procedures. In fact, the Guidelines have produced a virtual moratorium on testing due to their complexity and the extreme difficulty of "validating" tests as nondiscriminatory under the Guidelines. This result is in part due to the EEOC's failure adequately to consider or respond to professional and public criticism of the Guidelines before their adoption. Schlei & Grossman, Employment Discrimination Law, 1979 Supplement, 31-31 (1979). CACI recommends that the Uniform Guidelines be reopened for comment and modified to embody advances in testing theory that have occurred in the past several years. New Guidelines should be directed toward a practical result which allows for the reasonable use of testing.

Closely allied with EEOC's assault on testing is its antipathy to generally accepted job evaluation systems. EEOC has commissioned a study of such systems by the National Academy of Sciences. The preliminary study report suggested that all evaluation systems are inherently biased, and indicated that NAS was attempting to draft a non-biased job evaluation system which would replace the present systems. Although it is long overdue, no final report has been issued.

CACI believes that the study of job evaluation procedures should be halted, unless a significant commitment to utilize the services of experienced professionals in this field is made. Otherwise, like testing, employers may be faced with virtual elimination, through EEOC Guidelines, of evaluation systems which have been in place and working well for decades, and which have not been adjudged to be discriminatory.

We note that the EEOC's Sexual Harassment Guidelines, 29 CFR Part 1604.11 (1980) also have been the subject of vigorous public debate and examination. We agree that some modified form of these Guidelines should be issued in an effort to alert employers and employees to the legal and moral responsibility to provide a workplace free of sexual coercion. However, the Guidelines' attempted imposition of strict vicarious liability upon employers for the acts of the public, other employees and supervisors, should be eliminated. Strict liability should be replaced with a standard that gives an employer a chance to remedy instances of harassment which are brought to its attention. Additionally, the vague, personally subjective definition of sexual harassment ("unwelcome sexual advances") should be replaced with clearer and more objective language.

III. EEOC position on "comparable worth"

"Comparable worth," a concept which focuses on the comparison of jobs across, rather than within, occupations has been another subject of recent EEOC scrutiny. Past statements of EEOC personnel have indicated a ready acceptance of comparable worth as a tool to eliminate perceived inequities in the job market. Sex discrimination has been the primary focus of proponents of the theory, but it conceviably could be utilized in other areas of discrimination. The Supreme Court recently declined to adopt the "comparable worth" theory in *Gunther* v. *County of Washington*, ———— S. Ct. ———— (1981). However, it is likely that this one Supreme Court decision will not be entirely dispositive of this controversial theory.

There can be little doubt of the results of application of the comparable worth theory to employers by EEOC. Application of the theory would require pervasive entry of the Government into the salary-setting process of all private businesses, to the extent of there being one "right" way to establish salaries. Even if such intrusion were practically possible, the ultimate result would be replacing the judgment of business with the judgment of government bureaucrats.

Obviously, such an intrusion of Government into the private employment is undesirable. CACI suggests that EEOC adopt a construction of Title VII that rejects the "comparable worth" theory. EEOC could thus declare, lawfully and with judicial precedent such as *Lemons* v. *City and County of Denver*, 620 F.2d 228, (10th Cir. 1980), that "comparable worth" is neither a legally sound theory nor one which could be feasibly administered as a regulatory measure. That position would be in full consensus with the Supreme Court's holding in *Gunther*, and would not preclude the EEOC from seeking redress in cases of international wage discrimination of the type alleged to have existed in *Gunther*.

APPENDIX I

Based on surveys of a sampling of CACI members, our experience shows that:

1. The EEOC and the OFCCP engage in "legalized extortion" by threatening to invoke their burdensome investigatory procedures to force a company to settle, regardless of the lack of merit in a given case. The following story was typical of the experience:

"A fact-finding session, subsequent to the filing of a discrimination complaint, was conducted. The EEO Investigator indicated the case might be settled if we agreed to reinstate the former employee. After the proposal was rejected by the Company, the Investigator then proposed that we pay the equivalent of 3 months back pay to the complainant *in order to avoid the possibility of an on-site investigation.* This proposal was countered with a $200.00 offer by the Company which is still under consideration by the complainant. In our view, this so-called fact-finding discussion amounted to nothing more than an attempt to practice legalized extortion on the defendant Company regardless of the merits of the Company's position."

Another company relayed:

". . . the EEOC has taken a position of conciliate, or will investigate. For example, in one case where there was no merit to the complaint, the [company] declined to enter into an "agreement." After threats made by the investigator did not result in our signing, he stated he'd mark our file that we were a recalcitrant employer . . ."

An additional "extortionist" tactic frequently utilized by the investigators is in the form of outrageous, initial demands to "scare" the company into settling the matter. One company told the CACI that the Agency had initially demanded a $1,000,000 settlement. The case was eventually settled for less than one-tenth of that amount. At another company, the OFCCP investigator demanded that all female hourly employees be promoted to supervisory positions based only on their seniority, regardless of ability.

2. The EEOC and the OFCCP subscribe to the belief that all companies are "guilty until proven innocent." And, the agencies are very reluctant to accept any "proof" of a company's innocence, even when their own investigations reveal no evidence of discrimination. The following story was typical.

A three-day in-depth compliance review was conducted at a Company plant. In March, the Company received an official notification that the Company's Affirmative Action Plan was acceptable unless, within 45 days it was disapproved by the OFCCP.

No notification of disapproval was received from the OFCCP within the 45 days specified. But then, in June the same inspector advised the Company that its facility had been selected for a follow-up compliance review concerning the existence of affected classes of minorities and females at the facility. When the Company objected on the ground that the OFCCP had not disapproved of its Plan within the 45 days, he said that he had been "directed" by his superiors to go back and make another review and to find the affected classes of minorities and females.

The reply to the Company protest that it had already received a "clean bill of health," was:

"Though an error of omission we did not act on the affected class matter during our earlier review. Although we could not find you in non-compliance, for not correcting an affected class in 19 , we felt we had a duty to learn whether or not an affected class existed and to assist you in mitigating any future damages which might arise should the affected class exist. Your assertion that you were in compliance with the regulations at the time, is quite correct."

The agency proceeded to make a finding of the existence of affected classes of minorities and females and demanded that the Company sign a Conciliation Agreement.

Another company had similar experience:

"The E.O.S. people from the OFCCP indicated when they left one of our facilities after an audit, that we had a good plan and that they were favorably impressed with the results at this facility. Three days later, a letter was received that the AAP was not acceptable and the Company had five days to submit an acceptable plan. Plant people were also informed that these days were 'calendar days' and not business days."

Several other companies stated that OFCCP audits and/or EEOC compliance investigations had been conducted at their facilities pursuant to individual charges and the auditing and investigations revealed that there had been no discrimination. Nevertheless, settlement of the individual charge was still pursued.

3. The OFCCP and the EEOC frequently conduct investigations pursuant to untimely charges or complaints.

4. It is not uncommon for the OFCCP to conduct a desk-audit or on-set review at facilities where no government contract work is performed.

5. Compliance with the OFCCP and EEOC regulations is extremely costly. One company estimated that compliance costs 1.8 million dollars per year.

6. Investigators frequently engage in questionable conduct, by asking employees leading questions and revealing information supplied to them by the company to the employees. One company learned that an EOS from the OFCCP had tried to "stir

up" the employees by asking them "why do you think there is so much discrimination in this company?" Another company relayed that during one Equal Pay Act investigation, the EOS had divulged confidential salary information, by asking employees such questions as "did you know   was making more money than you . . . ?"

7. Finally, the companies uniformly agree that the EEOC and OFCCP often engage in "fishing expeditions" by requesting needless information unrelated to the investigation, rather than limiting themselves to the matters at issue.

ADDITIONAL COMMENTS OF THE CHICAGO ASSOCIATIONS OF COMMERCE & INDUSTRY (CACI)

The Chicago Association of Commerce and Industry (CACI) appreciates the opportunity to comment provided by the Committee's hearings. CACI is a voluntary organization of business and professional leaders working together to promote the commercial and industrial growth of Metropolitan Chicago and to foster civic improvements that benefit the general welfare of all who live and work in the area. CACI is in its 77th year of operation as the principal representative of the Chicago area business and industrial community and represents 6,500 businesses and 1,600 individual members, who employ over 1.2 million workers.

CACI POSITION

The membership of CACI endorses and supports the original concept of affirmative action. No argument can be made that those who benefit from doing business with the government should not take affirmative action, i.e. make extra effort—to ensure their employment practices afford equal access and equal opportunity to all. We believe that ensuring equal opportunity was the intended purpose of the concept of affirmative action, and we believe that a return to that original purpose is sorely needed.

Originally, there was a vision of American business seeking to provide equal employment opportunities to all of our nation's diverse population. The OFCCP has obscured that vision, leaving frustrations and resentment on all sides. The OFCCP, in its practices and by its regulations, has turned from a role of fostering progress in equal employment opportunities to that of enforcing a runaway bureaucratic nightmare. It has defined its own authority, becoming an exponent of theories of discrimination far beyond the Congressionally mandated bounds of the Civil Rights Act.

CACI endorses a return to the original objective of Affirmative Action by a revised Executive Order that would reaffirm a commitment to encouraging and assisting prospective affirmative employment efforts. In the alternative, CACI would support major changes to current regulations implementing the executive order.

I. THE ADMINISTRATION OF EXECUTIVE ORDER 11246 HAS UNDERMINED ITS PURPOSE AND UNDERLYING OBJECTIVES

The regulations issued pursuant to Executive Order 11246, and the enforcement practices of the Office of Federal Contract Compliance Programs, have corrupted the original intent and purpose of the Order. The Order was promulgated to ensure that government contractors would make special efforts to provide equal employment opportunity. OFCCP instead has imposed a requirement of equal employment results. It has exceeded its charter and authority, and has imposed back-pay liability and other remedial relief upon contractors whose work forces do not reflect the OFCCP's expected statistical results. Actual opportunities available and employer progress in increasing the employment of minorities and women, are ignored. OFCCP has imposed upon government contractors a maze of detailed statistically-oriented Affirmative Action Program requirements, and turned the Affirmative Action process into a harassing "numbers game."

A. The imposition of backpay and other remedial relief is unauthorized and duplicative of other agencies' activities

Millions of dollars in backpay have been paid by contractors. These payments have been compelled by the desire to avoid the costly prolonged administrative process. Absent access to judicial review or any other prompt remedy for unreasonable administrative action, employers have chosen the less costly alternative of nonresistance. However, no authoritative judicial precedent exists determining that

OFCCP is authorized to require backpay, and the position that backpay is not authorized has been compellingly briefed.[1]

In addition to its backpay demands, OFCCP has sought other remedies from contractors similar to those imposed only after judicial findings of discrimination. But OFCCP refuses to recognize Supreme Court decisions defining standards to be utilized in determining the existence of discrimination. OFCCP contends such decisions, which generally interpret Title VII, are not applicable to its administration of the Executive Order program. In reality, OFCCP adopts those decisions it considers "helpful" to its mission, while rejecting "unfavorable" decisions. Thus government contractors are subjected to penalties based on OFCCP's often vacillating views of its mandate, without the safeguards of judicial decisions or procedural standards defining the limits of liability for discrimination.

OFCCP's emphasis upon remedies normally provided by judicial decrees duplicates the efforts of the EEOC and hundred of local Fair Employment agencies. This multiplicity of parallel enforcement activities increases the cost of doing business with the Federal government unnecessarily. At the same time this duplicating emphasis on rectifying past discrimination detracts from special efforts to open additional opportunities to the protected classes. OFCCP authority should complement other enforcement efforts rather than duplicate them. That authority should be limited to debarment when efforts to enhance available opportunities for the protected classes have not been made.

B. Compliance with Executive Order 11246 has become a burdensome, harassing "numbers game"

The imposition by OFCCP of complex and sometimes absurd requirements for the development of specific numerical goals, and its review of contractor compliance, are the focus of most government contract resentment and frustration. The Agency's Equal Opportunity Specialists are notorious for their prosecutorial attitudes and unwillingness to allow for any flexibility even when the facts show a compelling need for departing from rigid, mathematical formulas. This approach is encountered with such regularity that federal contractors have come to believe that the OFCCP has instructed each of its investigators: (a) to assume every company to be discriminating and (b) not to let the contractor dispel that image by confusing the investigator with the facts.

Abuses in the compliance process abound, and are a sad indication of how far from the concept of Affirmative Action we have strayed. A real opportunity for improving employment opportunities for women and minorities has been lost through inept and arbitrary administration. OFCCP effort is directed toward finding contractors guilty of violating its regulations. As a result, contractor effort is directed toward emerging from reviews as little scathed as possible. Under such inflexible and seemingly hostile requirements the "affirmative" has been lost.

CACI does not believe the whole of American business to be so ill-intentioned and so recalcitrant as to call for the tactics OFCCP has adopted. The OFCCP is training a generation of businesses in everything about how to comply with the minutiae of repressive regulation and nothing about the social good that was affirmative action's aim.

II. ALTERNATIVE APPROACHES TO ACHIEVING EXECUTIVE ORDER 11246 OBJECTIVES

CACI recommends putting the "Affirmative" back into the concept of Affirmative Action. Equal employment law enforcement—the punitive side of the country's equal employment policy—should be left to the EEOC, the various state and local agencies which have "deferral status," and the private litigants contemplated as "private attorneys general" by the Civil Rights Act of 1964.

A new Executive Order and the staff chosen to implement it should aim at being constructive, educational, helpful—the affirmative concomitant of national equal employment policy.

Its implementation should be selective—concentrating on major government contractors whose employment statistics evidence a substantial shortfall in minority and/or female employment. The Executive Branch should offer such employers aid, counsel, and affirmative suggestions for means by which progress toward achieving equal employment opportunity could be made. Such assistance should then be followed up by periodic progress audits. If progress in the key segments of their work force (Officials and Managers, Professionals, Technicians, and the other categories designated in the EEO-1 reports) is made, then further counseling should be voluntary with the contractor. If progress is not shown, then inquiry should be made as to whether the affirmative suggestions previously made have been followed. If they have been followed, albeit without success, it should be the task of the administrator to provide further suggestions and help in achieving progress. Only if the suggestions have not been followed should there be reason to question whether the contractor should continue to be qualified to do business with the government.

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[1] See attached portions from Brief of Defendant Harris Trust and Savings Bank and the Brief Amicus Curiae of the Equal Employment Advisory Council in *United States Department of the Treasury v. Harris Trust and Savings Bank* at Appendix II.

Thus, affirmative action can be restored by emphasizing the positive and providing help and assistance to contractors on the assumption that they want to provide equal opportunity—not on what seems to be the current assumptions, i.e., that all government contractors want to subvert equal employment policy.

Some progress toward a more rational and constructive program could also be made by regulatory reform. Reform should be directed at developing a less specific, more open-minded approach, allowing for more flexibility in the compliance process. Among specific reforms CACI urges are the following:

A. *Elimination of backpay requirements*

Full relief, including backpay and reinstatement, is available to victims of discrimination proven under Title VII. The prosecutorial and punitive stance involved in assessing backpay is counterproductive to what should be OFCCP's purpose of encouraging affirmative efforts to increase employment opportunities. Accordingly, we recommend revision of the regulations to eliminate any assessment of backpay.

B. *Elimination of duplicative complaint-processing activity*

The area of complaint-processing is truly one in which duplication of effort has been rampant, in spite of "OFCCP-EEOC Memoranda of Understanding" to the contrary. The Equal Employment Opportunity Commission should be acknowledged as the agency primarily responsible for discrimination complaint processing, as well as for seeking relief for proven victims of discrimination. OFCCP should only process complaints for which it is the sole source of relief. Such clear-cut role assignment can only aid OFCCP's return to its original purpose and will result in two agencies whose efforts are complementary rather than duplicative. The fact that contractors' actions will be judged by a consistent standard, that of Title VII, will also go far to alleviate businesses' current confusion and "double jeopardy."

C. *Elimination of burdensome and counterproductive requirements*

Without cataloging all of the individual regulations which are burdensome, or counterproductive, CACI supports the following reform or relief:

1. A simplification of Affirmative Action Plan requirements; current AAP requirements include a work force analysis by "job groups," an eight-factor availability analysis; a utilization analysis, goal setting by job group and a number of other analyses. All of this strongly suggests a thinly disguised quota system. Affirmative Action Plans should, instead, be oriented toward progress in achieving improvements in minority and female representation in each of the EEO-1 categories. This can be done without the complex and arbitrary formulas which now impose a heavy and well-nigh incomprehensible bureaucratic burden on contractors.

2. An increase in the threshold for Affirmative Action Plan preparation; the current $50,000 and 50-employee threshold subjects many small contractors with little access to expertise and with limited impact on the labor force, to an onerous paperwork burden.

3. A less expansive definition of government contractor; under the current OFCCP definitions, practically any business can be a government contractor. Executive Order obligations are legally justifiable as part of a government procurement program; asserted coverage of businesses with only the most ephemeral relationship to a government contract should end. OFCCP's position that all of a contractor's facilities, subsidiaries, parent companies and their facilities, including those unrelated to any government contract, are subject to the Executive Order requirements should be revised.

4. An elimination of, or increase in, the threshold, pre-award compliance reviews. Such reviews, consume an inordinate amount of OFCCP resources, which could be better utilized. If preaward reviews are to be retained at all, then such reviews should be limited to very large contracts and contractors, where a genuinely significantly impact on government procurement policies can justify the burden on the regulated industry.

5. The elimination of declarations of underutilization; contractors should not be forced, by virtue of doing business with the government, to publish statements increasing their exposure and liability under Title VII. Underutilization, in any event, should be a concept which applies only when the disparity between the number of minorities and females in the category and "availability" is statistically and practically significant. (See *Firestone Tire and Rubber Co.* v. *Marshall*, 507 F. Supp. 1330 (E.D. Tex. 1981), attached.)

STATEMENT OF ANNE BLAIR, EXECUTIVE DIRECTOR, PRO & CON SCREENING BOARD INC., CHICAGO, ILL.

Good morning Congressman Hawkins, Congressman Washington and Members of the Committee. My name is Anne Blair and I am the Executive Director of the Pro & Con Screening Board. The Pro & Con Screening Board is a not forprofit, tax exempt organization that has worked to eliminate the negative images of minorities in motion pictures and television.

I appreciate the opportunity to address this distinguished committee on behalf of the Members and Board of Directors of the Pro & Con Screening Board.

For the past five years the Pro & Con Screening Board has studied the creation and maintenance of negative stereotypes of minorities in motion pictures and television. Since 1914 when D. W. Griffith presented America with the most powerful negative statement about Blacks in America in his film, "Birth of a Nation", minority agencies nationwide have fought continuous attempts by these industries to define what minorities are. Native Americans, Asians, Hispanics and other minority groups have also suffered. Negative visual images of any ethnic group has a powerful effect upon the majority population in our society as well as preventing children of that group from advancing beyond the stereotypes presented of their group. There is a critical need for Affirmative Action policies to remain in tact and in place. We are opposed to any revision of Executive Order 11-246. We need the involvement of minorities in front of and behind the cameras (which often means involvement in the construction of sets and working with unions).

From childrens' television productions to reporting the news, the fair and equitable employment of women and minorities in these industries is an absolute necessity, if those groups are ever to be proud of the image of themselves on the big and small screens throughout the world.

On October 29, 30, and 31, 1981 the Pro & Con Screening Board and a Consortium of Colleges and Universities will present a National Conference on the Media. The theme of the Conference is "The Future of Women and Minorities in Mass Communications With or Without EEOC!" We invite members of this committee and members of this audience to be a part of this conference. There is a real danger in allowing the powers that be in mass communications to operate on good faith.

Our government must not be allowed to give contracts to motion picture and television companies unless these companies are monitored by Affirmative Action statutes, under executive order 11-246, without any amendments to the law as it is not. Past history of these industries indicate a poor record of equality of employment for minorities. By their very nature and the products they produce they are the most powerful industry on the face of the earth. There is a direct relationship between the perpetuation of stereotypes and lack of employment of minorities in these industries. Without government intervention, minorities will be left out. The new visual technologies will be available to all BUT here again, Minorities will be excluded if action is not taken by this committee. I appeal to you, to work diligently to prevent any tampering with Affirmative Action, and on behalf of the members and the Board of Directors, pledge the support of the Pro & Con Screening Board.

Thank you for your time and attention.

[From the Washington Post, Oct. 1, 1981]

FEDERAL BENEFITS BEING WITHDRAWN

(By Thomas B. Edsall)

Today, the first day of the government's new year, the Reagan administration's budget cuts begin to slice the edge off a vast network of domestic spending programs.

Oct. 1—the effective date for most of the $35 billion in cuts—marks the reversal, at least temporarily, of two great waves of government intevention, the New Deal and the Great Society. Instead, the United States now embarks on a policy of withdrawing government benefits from persons making from $6,500 to $17,000 a year, an income class making up well over 30 percent of the population and including the working poor.

They are people like Barbara Fanning, a $460-a-month parttime crossing guard in Nashville. She has already been notified, that she will lose a small monthly welfare payment, which is a minor deprivation. But with it will go, or at least be curtailed, the full Medicaid coverage she and her asthmatic 8-year-old son currently depend upon. Fanning 30, is typical of many of those who will be hit first by the Reagan administration budget cuts—families run by women, most often with some form of earnings.

For state and local governments that depend on the federal government for one-quarter of their revenues, the cuts are now being translated into a reality that differs from jurisdiction to jurisdiction. As states struggle to sort out the fiscal consequences of both the federal budget and tax cuts, they have already raised taxes by $2.5 billion, and many legislatures are still to hold special sessions.

The state of Arizona expects to be hurt less severely by the budget cuts that many others. "We already run very conservative programs," said Don Mathes, of the Department of Economic Security. Still, the director of the Arizona department's volunteer services division, said, "We are putting all our front-line people through a violent incident training program showing them what to do when some of these people show up at the worker's desk. We expect a little stress in the office."

At the same time, the first of three individual tax rate cuts starts today. For a family with two children and a $10,000 income from a single wage-earner, the total reduction over three months will be $4.68 on federal taxes of $374. The $100,000 family with a single earner and two children would get a $348 reduction on taxes of $27,878. Corporate reductions have already gone into effect, along with a retroactive reduction in capital gains taxes, a step designed to encourage investment by the wealthy.

The spending cuts have hit unevenly. About 270,000 public service workers have already been let go and school lunches almost everywhere have gone up by 20 to 30 cents. A scattering of school systems have dropped out of the subsidized program altogether.

Most users of the college student loan program appear to have beaten tighter regulations by getting applications in before today. This will postpone an expected outcry until the start of the school year in 1982, just the time congressional election fights will be heating up.

Over the next three months, however, as regulations are put into place, is the period when people with marginal incomes—office building cleaners, waitresses, part-time beauticians, maids, crab pickers and chicken pluckers—will see the elimination or reduction of partial welfare benefits, Medicaid health coverage and food stamps.

The scope of the changes is reflected in the following rough administration and congressional estimates: in the Aid to Families with Dependent Children program, the basic welfare program, 400,836 families will be cut off the rolls and another 258,528 will have benefits reduced. In the food stamp program, 875,000 families will be dropped from the program and 1.4 million households, or 5 million people, will have benefits reduced.

The 22.5 million people who have been eligible for health care through the Medicaid program face changes that will vary from state to state, but the final outcome is likely to be determined at one level by the competing lobbying strength of the poor, the elderly, the disabled and the blind, and at another by political competition between hospital, doctor, nursing home and pharmaceutical interests.

Changes in the unemployment compensation program will mean 1,055,000 civilian workers who would have been eligible for extended benefits under the old law will not be during the fiscal year starting today. About 130,000 servicemen and women who voluntarily leave the military will no longer be eligible for unemployment benefits.

The cutback of the trade adjustment assistance program providing benefits to U.S. employees put out of work because of foreign competition will mean a loss of benefits for 234,000 persons this fiscal year. The phasing out of the public service section of the Comprehensive Employment and Training Act has resulted in the elimination of 314,000 job slots.

The administration contends that, in the main, the cuts in these programs are designed to speed achievement of a balanced budget by 1984 and to reduce an economically unproductive dependency on government programs.

The specific economics of the budget cuts are illustrated by the case of Connie Wilson, 36, of Sioux City, Iowa, who earns $722 a month at the local Community Action Agency. Her oldest son works after school in a sports store and makes $120 a month. The mother of five children, she has, until now, also qualified for a $481 monthly payment from the Aid to Families with Dependent Children program, which made her eligible for Medicaid.

Effective today, however, she loses both the welfare and Medicaid coverage if she and her son keep their jobs. If she chooses to quit her job, she would qualify for a $516 monthly welfare payment, an amount roughly equal to or exceeding her family's actual take home income after expenses. Or her son could quit work and the family would qualify for a smaller welfare payment. With the welfare payment, however, would come a return to the Medicaid program with full medical coverage and eligibility to receive up to $250 in food stamp benefits.

By any strict accounting standard, it is to her advantage to quit work and go on welfare, a choice she does not, in fact, intend to make.

The administration has initiated a government-wide effort to ease the regulatory burden on American business, an effort to allow companies to fully exercise competitive instincts and business acumen for expanded growth and production.

In direct contrast, for the food stamp recipient, welfare beneficiary and applicant for free or reduced-price school lunch, the regulatory apparatus has been expanded. Applications for school lunch subsidies will have to include the parents' Social Security number and a pay stub or other form to verify income claims.

Welfare workers are to inspect clients' homes to determine whether they violate the lowered ceiling on assets from $2,000 to $1,000 and make detailed dollar value judgments on lists of goods that fall within the asset category. Food stamp and welfare recipients are to submit monthly income reports, as opposed to the general current practice of periodic accounting.

In the case of welfare and Medicaid recipient Fanning, the administration effort to force increased work and productivity translates into a cutoff of benefits. By contrast, for unprofitable companies like Ford Motor Co., International Harvester and Chrysler, the administration won passage of a new tax provision that effectively amounts to an indirect tax subsidy from the federal government to the corporations in return for new investments.

By rewriting the tax law governing leasing, the government has allowed profitless companies to lease, instead of buy, new investments from profitable companies. It is a new kind of transaction that allows the poor company to sell for cash previously useless investment tax credits.

A state-by-state survey by Washington Post special correspondents reveals great disparities in the impact of the cuts.

In Vermont, Gov. Richard Snelling, an early supporter of the Reagan program and head of the National Governors Conference, now complains that the cuts were "too much, too fast," and the disruption they are likely to cause may severely wound, it not dismantle, the drive toward austerity.

The political consequences of the cuts will largely depend on the success or failure of the entire Reagan economic recovery program. Iowa, in a matter of just two elections, changed from having two of the most liberal Democratic senators in the country, John Culver and Dick Clark, to two of the most conservative Republicans, Roger W. Jepsen and Charles E. Grassley. Without a marked improvement in the economy, Jepsen and Grassley face the prospect of explaining to the families of an estimated 9,600 students, most of them middle class and key swing voters why they are going to have their student loans cut off next year.

Similarly, Iowa farmers will face a cutoff of $90 million in lending by the Farmers Home Administration and other rural lending agencies that will affect, according to local estimates, up to 2,150 households, not to mention the effects the reductions in commodity supports contained in the farm bill still before Congress will have on farmers' income.

Parallel consequences in nearby Kansas are probably a factor in the recent calls by Sens. Robert J. Dole and Nancy Kassebaum, both Republicans, for shifting more of the new budget cuts to the Defense Department.

It is not at all clear yet how cuts in federal subsidies of the school lunch program will affect farming, but, with prices for students from families of four with incomes ranging from $8,450 to $15,630 doubling from 20 cents to 40 cents, and the price for those from higher-income families jumping from about 60 cents to 80 cents (in some cases rising to $1 or $1.25), school officials report a decline in student participation, ranging up to a 25 percent dropout rate in Rhode Island.

In theory, poor children—those from families with income less than $8,450—are to continue to receive full access to free school lunches, but a small percentage of schools in scattered districts are dropping out of the national program altogether.

In Arizona, at least seven districts, including the Paradise Valley district with 19,072 students, 1,630 of whom qualify for free or reduced-price lunches, have withdrawn from the national school lunch program. In Pulaski County, Ark., the junior and senior high schools, with just over 14,000 students of whom 3,700 are eligible for reduced-price or free lunches, have withdrawn.

Although the sharpest cuts are concentrated on the working poor, the farm program reductions, school lunch and student loans, among others, are progressively to be felt among middle class (and more Republican) voters. At the end of this year, one cut will be felt by all the elderly: the deductible amount of hospital costs that the recipient must pay will increase by 27 percent, from $204 to $260.

In addition, the Comprehensive Employment and Training Act cuts are already being felt in some basic public services. In Cowlitz County, Wash., for example, the CETA program paid for workers to staff the community's only library service, a bookmobile. Cancellation of the CETA program forced voters in the county to take the issue of continued financing of the bookmobile to referendum. Local firemen, who viewed the spending proposal as a threat to continued financing of their work, successfully fought the expenditure, defeating it by a vote of 1,526 to 1,153 on Sept. 15.

Similarly, a fiscal fragile bus system is Athens, Ohio, collapsed last month when CETA funding of the bus drivers' salaries was canceled.

The new economics of scarcity, and the political pressures that follow, are exemplified in Arkansas, where Frank White, the state's second Republican governor in more than a century, decided to deepen cuts in the basic welfare program by shifting money from AFDC to the Medicaid program. The basic monthly AFDC grant for a family of two will drop from $133 to $100 and for a family of nine from $304 to $229.

The governor's decision has prompted complaints from some Democrats that the state administration yielded to pressure from the nursing home lobby—which gets a significant share of the Medicaid program—at the expense of welfare recipients. Children, said Democratic State Rep. Don McKissick, of Star City, "don't have a very strong lobby."

In Texas, the federal cuts in unemployment benefits are not as severe as the actions adopted by the state legislature, which voted to prohibit benefits for those who quit their jobs, are fired for cause, or refuse to take "suitable" job offers.

In addition, a largely unnoticed provision in food stamp cuts prohibiting stamps for persons on strike is likely to have a significant effect on labor-management relations. In West Virginia, for example, the families of 27,000 striking mineworkers received food stamps during the 72-day walkout earlier this year.

States and cities report widely varying results in efforts to place fired CETA workers in jobs in the private sector. South Carolina officials claim to have placed 76 percent of those let go. But in Dade County, Fla., officials set up a program called Project Hire to place 2,650 laid-off workers, but only 100 were hired by private companies.

FAMILIES AFFECTED BY CERTAIN AFDC PROPOSALS

State	Reduced benefits	Percent of roll	To be ineligible	Percent of roll
Alabama	4,900	7.4	9,291	14.0
Alaska	230	3.7	542	8.8
Arizona	1,679	10.0	1,400	8.3
Arkansas	2,880	8.8	4,180	12.8
California	42,010	8.2	51,017	10.0
Colorado	3,006	9.9	4,726	15.5
Connecticut	3,836	7.9	8,019	16.4
Delaware	870	7.2	1,240	10.3
District of Columbia	2,529	7.4	3,311	9.6
Florida	3,746	4.0	10,307	11.0
Georgia	2,452	2.9	9,582	11.3
Hawaii	3,034	14.8	3,030	14.8
Idaho	499	6.1	1,000	12.1
Illinois	14,606	6.3	15,983	6.9
Indiana	3,756	6.9	10,153	18.7
Iowa	3,698	10.7	5,217	15.0
Kansas	1,553	6.3	5,666	23.0
Kentucky	1,821	2.8	9,269	14.0
Louisiana	3,335	4.7	5,081	7.2
Maine	1,592	7.3	4,794	22.1
Maryland	3,793	4.8	10,853	13.8
Massachusetts	12,048	8.9	25,971	19.1
Michigan	22,059	9.9	20,622	9.2
Minnesota	5,925	11.2	13,901	26.3
Mississippi	4,027	6.6	11,520	19.0
Missouri	5,364	7.6	13,940	19.7
Montana	290	4.5	1,744	27.3
Nebraska	1,392	11.0	1,629	12.8
Nevada	654	16.7	0	.0

FAMILIES AFFECTED BY CERTAIN AFDC PROPOSALS—Continued

State	Reduced benefits	Percent of roll	To be ineligible	Percent of roll
New Hampshire	1,184	16.0	591	8.0
New Jersey	13,638	8.5	11,777	7.3
New Mexico	1,444	7.9	580	3.2
New York	19,367	5.0	15,221	3.9
North Carolina	3,898	4.8	9,902	12.2
North Dakota	621	12.1	1,051	20.4
Ohio	7,672	4.2	15,899	8.8
Oklahoma	1,133	3.6	1,812	5.8
Oregon	4,444	9.6	3,348	7.3
Pennsylvania	15,529	6.8	24,632	10.8
Rhode Island	2,643	13.8	1,920	10.0
South Carolina	2,127	3.8	6,171	11.1
South Dakota	741	9.5	925	11.9
Tennessee	1,126	1.8	7,085	11.0
Texas	4,050	4.1	8,119	8.3
Utah	1,596	11.4	2,084	14.9
Vermont	339	4.2	1,356	16.7
Virginia	4,469	7.1	8,227	13.1
Washington	3,166	5.7	2,253	4.1
West Virginia	1,411	5.0	1,406	4.9
Wisconsin	10,183	13.4	12,068	15.9
Wyoming	153	5.7	408	15.3
U.S. total	258,528	6.9	400,836	10.7

Administration figures on state by state numbers of families being cut from rolls or facing reductions in their benefits under Aid to Families with Dependent Children.

SOCIAL SERVICES FEDERAL SPENDING

State	Fiscal year—	
	1981	1982
Alabama	$49,764,061	$40,989,347
Alaska	5,359,411	4,214,843
Arizona	31,305,345	28,639,857
Arkansas	29,071,148	24,087,927
California	296,483,159	249,402,791
Colorado	35,507,761	30,441,703
Connecticut	41,212,941	32,749,329
Delaware	7,753,193	6,269,579
District of Columbia	8,963,382	6,722,674
Florida	114,289,776	102,631,424
Georgia	67,811,033	57,574,754
Hawaii	11,929,012	10,168,309
Idaho	11,676,335	9,947,029
Illinois	149,518,263	120,312,691
Indiana	71,467,682	57,848,719
Iowa	38,513,287	30,694,594
Kansas	31,225,552	24,899,184
Kentucky	46,519,157	38,576,350
Louisiana	52,742,989	44,297,999
Maine	14,508,977	11,854,246
Maryland	55,096,875	44,424,444
Massachusetts	76,787,196	60,451,384
Michigan	122,202,554	97,552,539
Minnesota	53,301,539	42,959,786
Mississippi	31,970,284	26,564,,047
Missouri	64,632,105	51,810,956
Montana	10,439,548	8,292,703
Nebraska	20,812,602	16,543,258
Nevada	8,777,199	8,419,149
New Hampshire	11,583,244	9,704,676

SOCIAL SERVICES FEDERAL SPENDING—Continued

State	Fiscal year—	
	1981	1982
New Jersey	97,440,213	77,595,258
New Mexico	16,118,130	1[illegible],698,239
New York	236,026,873	184,999,992
North Carolina	74,167,335	61,894,968
North Dakota	8,670,809	6,880,731
Ohio	142,948,662	113,769,147
Oklahoma	38,300,507	31,874,749
Oregon	32,502,236	27,744,203
Pennsylvania	156,260,748	125,043,851
Rhode Island	12,434,368	9,978,641
South Carolina	38,805,861	32,865,237
South Dakota	9,176,163	7,270,604
Tennessee	57,942,815	48,375,859
Texas	173,070,415	149,921,962
Utah	17,381,515	15,394,714
Vermont	6,476,509	5,384,462
Virginia	68,462,158	58,331,375
Washington	50,189,622	43,518,253
West Virginia	24,735,744	20,547,359
Wisconsin	62,225,025	49,577,090
Wyoming	5,838,688	4,952,977
U.S. total	2,900,000,000	2,400,000,000

Chart details cutback in federal government funds for such things as day car centers, special hospital services, child abuse programs and other basic social services.

[From the Washington Post]

FOLKS FIND IRONIES ABOUND WHEN PROGRAMS MEET PEOPLE

(By Kathy Sawyer)

In a state where programs from welfare to sewage treatment are suffering heavy cutbacks, one agency alone is getting fatter, presumably in case of trouble: the Iowa National Guard is looking forward to a multimillion-dollar increase, mostly for raises and bonuses for the troops.

Under the new federal austerity, families with students in plain old state universities may not be eligible for guaranteed loans but families with higher income and children in exclusive private colleges will be.

As Reaganomics hits Main Street, the folks along the sidewalks are rediscovering the quirkness that occurs when programs meet people. There are ironies, contradictions, odd winners amid the sea of losers. A policy thrust in one direction sets up currents in another.

In states from Hawaii to Vermont, for instance, officials say much of the savings in welfare cuts could be offset as victims of those reductions become eligible for food stamps as a result.

In Hennepin County, Minn., three-fifths of the mothers who now both work and receive welfare are planning to quit their jobs and rely entirely on public assistance, since under the new rules they will get almost the same income, a study shows.

In states such as Mississippi and Kentucky, whose populations are heavily dependent on public help, officials fear the cutbacks in social programs will jeopardize not just those on the dole but, in a kind of "trickle up" of pain, also some small businesses, such as Mom and Pop grocery stores, whose customers are mostly poor folks.

In Hawaii, state legislators learned the folly of being among the more forward-looking in the nation in trying to plan for the onset of Reaganomics. They convened a special session this summer, designed in part to deal with the threatened loss of nearly $14 million in federal impact aid (compensation to the state for non-taxpayers at military bases on Oahu) and the resulting layoff of more than 500 teachers. Just as they got a plan worked out, Congress eliminated most of the cut.

A certain hardness of heart has surfaced in some quarters in tandem with the general belt-tightening. In a poll taken by the St. Paul Pioneer Press in that solidly

Democratic Minnesota city, the bleeding heart quotient was stunningly low. Only 16 percent approved increases in state and local taxes to continue welfare programs axed by the administration. In Dade County, Fla., citizens at a meeting jeered a blind man complaining of cutbacks in the schedules of the van that had transported him to work.

Among those who will be hurt by the changes are farmers. Orson Swindle, director of the Georgia Farmers Home Administration, expects to foreclose on some farms, even though "farming is the lifeblood of Georgia," as the FHA shifts gears to an emphasis on servicing and colleting debts instead of lending.

On a brighter side, controversial cutbacks in the school lunch program already have produced some interesting innovations in several states. In South Carolina, a group of black ministers, the Greater Columbia Chamber of Ministers, is organizing to raise money to help any families who can't affort to feed their children under the new program. In Delaware, schools in populous New Castle County, which includes Wilmington, have started "satelliteing," that is, preparing school food for elementary schools in high school kitchens in order to cut costs.

And in Georgia's Worth County, food service director Peggy Harris shaved off a penny per savings on the 2,500 lunches she serves per day by buying up fresh corn and peaches in bulk from local farmers and freezing the produce to be served later.

Perhaps the most consistently observed irony in the Reagan program is its negative effect on the work ethic—so basic to the Reagan philosophy—among poor people.

"There is an obvious gap in public policy," said John von Schlegell, a Massachusetts welfare official. "We are trying to encourge people to work and yet most of the cost savings are directed at working people."

Among the women in the Minnesota study, for instance it was found that working would gain them less than than $50 a month over what they'd get if they just stayed home and collected Aid to Families With Dependent Children.

Only about 15 percent of those receiving AFDC nationwide work full or part time, noters the University of Chicago Center for the Study of Welfare Policy, and yet virtually all of the savings are slated for this small segment, with the probable result a "severe discentive to work."

Undcer a revised student loan program, the imposition of income ceilings coupled with state "standards of need" gives higher income familes an apparent edge.

In Tennessee, for instance, assuming $3,000 in books, board and other non-tuition expenses, a student attending Vanderbilt, a private university, is eligible for a full $2,500 loan if his family of four has an income of up to $44,650, officials said. That's because Vanderbilt's tuitition is relatively high, $5,545 annually.

A student with the same non-tuition expenses attending the University of Tennessee, where tuition is only $741, would be eligible for no financial assistance if his family of four had a yearly income of as much as $30,000.

One purpose of the changes was to cut costs by preventing people from borrowing when the didn't need to, one Washington education specialist said. "I don't see any inequity in that."

If you look at the math, said an official of the Tennessee Student Assistance Corp., it's obvious that the family sending a child to Vanderbilt "will have a higher need."

In Iowa, state that expects to lose a grand total of $343 million in fedral funds, National Guard officials see their ship coming in at last.

The $2.5 million increase in federal money is merely a sign that the pendulum is swinging in the opposite direction from the past, when social programs were stressed at the expense of the military, said state Adjutant General Roger Gilbert.

"We're still damn tight," he said. "Without a guilty conscience I will ask the governor for $300,000 more for maintenance and $300,000 more for educational benefits."

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
SOCIAL SECURITY LOCAL NO. 1395,
Chicago, Ill., August 12, 1981.

Hon. HAROLD WASHINGTON,
1610 House Longworth Bldg.,
Washington, D.C.
(Attention of Mr. Gibbins)

DEAR CONGRESSMAN WASHINGTON: As per our conversation with Mr. Gibbins on Monday we are taking the opportunity to present written testimony in connection to the EEO oversight hearing which you held on Tuesday in Chicago.

As you know we represent employees at the Great Lakes Program Service Center, Social Security Administration located at 600 W. Madison St. in Chicago as well as other government employees in the region. Over 2,400 employees work at the Program Service Center.

Recently some Program Service Center employees studied the promotion patterns at this installation. What they found indicates lack of commitment to equal opportunity in government promotion. To talk of goals vs. quotas is meaningless when minorities and women are not even being promoted in proportion to the percentage of positions which they occupy in the grades from which the promotees are drawn. White males still receive a very disproportionately high share of promotions while minorities do not get their fair share. One would expect that if 40 percent of GS8 employees are minorities, then 40 percent of the promotees to GS9 positions would be minorities. Should this not be the case, a prima facie case of at least unconscious racism on the part of selecting officials exists. Furthermore, the negotiated Affirmative Action Plan has not been implemented.

Enclosed is a summary of the report together with related documents.

Sincerely yours,

DONALD W. JONES, *President.*

UNION FINDINGS OF EEO COMMITTEE ON THE LACK OF EQUAL OPPORTUNITY IN PROMOTION FOR THE 2 YEARS ENDING MARCH 1981

The rate of promotions for the various groups was compared with their percentage of the working population at various grade levels according to the Great Lakes Program Center's Work Force Profile for Fisal Year 1980 Affirmative Action Plan.

Several very disturbing trends were noted:

1. Although non-minority males occupy 28.1 percent of the positions at the GS8 level and 28.9 percent of the positions at the GS9 level, their rate of promotions to or competitive reassignment to GS9 positions is a disproportionately large 37 percent.

2. Although non-minority females occupy 22 percent of positions at the GS8 level and 22.5 percent of positions at the GS9 level, their rate of promotion or competitive reassignment at the GS9 level is a disproportionately high 35 percent.

3. Although non-minority males occupy 28.9 percent of GS9 positions, they received 41 percent of the promotions to the GS10 level, a level including entry supervisory positions.

4. Non-minority females, occupying 22.5 percent of positions at the GS9 level, received 35 percent of the promotions to the GS10 level.

5. Non-minorities, both male and female, occupy 51.4 percent of the GS9 positions. They received 75 percent of the promotions to the GS10 level.

6. Similarly, non-minority males occupy 36.5 percent of GS 10 positions and non-minority females occupy 26.1 percent of positions at this level. Yet, non-minorities received 78 percent of the promotions to the GS 11 level. Most of these promotions were to Assistant Module Manager, for which GS 9 and GS 10 employees are in the area of consideration.

7. Blacks occupy 48 percent of GS 8 positions, 4 percent are males and 44 percent are females. Only 26 percent of promotees to GS 9 were black females, and .6 percent were black males.

8. Hispanics occupy a very meager 0.3 percent of GS 8 positions. They received 0.6 percent of promotions to GS 9 positions.

9. Native Americans received 0.6 percent of promotions to GS 9.

10. Asian males occupy a meager 0.3 percent of positions at the GS 8 level and Asian females occupy a meager 0.8 percent of GS 8 positions. Asians received only 0.6 percent of the promotions to GS 9 levels.

11. Minorities as a whole occupy 47 percent of GS 8 positions. They received only 29 percent of promotions to the GS 9 level. 27.44 percent were females and 1.4 percent were males.

12. Although black males occupy 5.4 percent of GS 9 positions and black females occupy 41.7 percent of GS 9 positions, black females received only 18 percent of the promotions to the GS 10 level. There were no black male promotees.

13. Hispanic males occupy a meager 0.5 percent of GS 9 positions and Hispanic females a meager 0.5 percent. Only 0.06 percent of promotees to the GS 10 positions were Hispanic.

14. Asian females occupy 0.5 percent of positions at the GS 9 level. There are no Asian males at this level, and there were no Asian promotees to the GS 10 level.

15. Minorities as a whole occupy 48.5 percent of GS 9 level positions. They received only 24 percent of the promotions to the GS 10 level. All of these promotees were female.

16. Only 37.4 percent of incumbents of the GS 10 positions were minorities.

17. Although black males occupy 4.8 percent of GS 10 positions and 5.4 percent of GS 9 positions, and black females occupy 31.3 percent of GS 10 positions and 41.7

percent of GS 9 positions, only 22 percent of promotees to GS 11 positions were black, 18 percent female and 4 percent male.

18. Non-minority females occupy 26.9 percent of positions at the GS 12 level, but they received only 14 percent of the promotions to the GS 13 level.

19. The great bulk of promotions received by minorities is at the GS 7 level and below.

20. Black males are poorly represented at all levels.

CLEVELAND WOMEN WORKING,
Cleveland, Ohio, June 24, 1981.

Congressman AUGUSTUS HAWKINS,
Subcommittee on Employment Opportunity,
Rayburn Building, Washington, D.C.

DEAR CONGRESSMAN HAWKINS: Enclosed please find Cleveland Women Working's study of the affirmative action plans of the five major Cleveland banks along with newspaper clippings about the progress of our campaign to improve employment conditions for women and minorities in Cleveland's banking industry. Wanda Flowers, staff attorney for Working Women, a national association of office workers asked that we sent this information to you to be entered as part of the record in your hearing on Friday, June 26, 1981 on equal employment.

Cleveland Women Working's study of the banking industry in Cleveland found widespread discrimination against women and minorities employed by Cleveland banks. Women were often passed over for promotions in favor of men who were less qualified. Many women trained males for supervisory jobs while making only $9,000 or $10,000 a year themselves. Women and minorities were on the bottom of the career and salary ladders in banks with little or no hope for advancement. Very few of the banks had any type of job posting system. In addition some women working at National City Bank of Cleveland full time were paid so little that they qualified for food stamps.

Since Cleveland Women Working began our campaign to improve the banks and the OFCCP began investigating the banks for affirmative action compliance, there have been some improvements in the employment practices of major banks in Cleveland. For example, Central National bank recently began a job posting program. Continental Federal Savings and Loan Association paid $403,000 in back pay to women and minority employees and committed $96,000 for training programs. Many of the banks have raised pay for clerical and promoted more women into management and supervisory positions.

These changes were long overdue and are welcome to the women and minorities who work in the banking industry. Unfortunately, we believe many of these changes are cosmetic only. Women and minorities are still concentrated in the lowest paying jobs with the least hope for advancement. Some of the banks still have no job postings, one of the simplest ways of showing true commitment to equal employment opportunity. National City Bank instituted a training program for non-degreed personnel but the highest level which they can attain is administrative assistant.

Women in banking are still overwhelmingly under paid and kept in low prestige jobs. And while there have been some deserving women promoted to positions of supervisors or managers, the average women in management still earns less than her male counterpart. For minorities this is even more prevalent.

It is vitally important that affirmative action regulations not be dismantled. When enforced affirmative action does work. Companies change when required by law to do so. But without strong enforcement, the changes will continue to be superficial.

Sincerely,

ANTOINETTE M. PONZO,
CWW Staff.

RAW SALARY DATA FOR 1976 AFFIRMATIVE ACTION PLAN OF SOCIETY NATIONAL BANK

Salary grade	Total, male/female	Male	Female	Minorities
Officials				
(1)	4	4		
11	3	3		

RAW SALARY DATA FOR 1976 AFFIRMATIVE ACTION PLAN OF SOCIETY NATIONAL BANK—Continued

Salary grade	Total, male/female	Male	Female	Minorities
10	5	5		
9	11	11		
8	6	6		
7	8	8		
6	25	24	1	1
5	30	28	2	4
4	28	27	1	
3	23	20	3	
2	12	6	6	
1	1	1		
Total	156	143	13	5
Managers:				
25	1	1		
24	3	3		
23	14	13	1	1
22	49	39	10	2
21	25	20	5	2
Total	92	76	16	5
Office clerical: [1]				
10	15	14	1	
9	35	17	18	4
8	45	21	24	1
7	27	10	17	2
6	119	29	90	12
5	85	12	73	12
4	137	13	124	22
3	126	9	117	17
2	204	21	183	65
1	67	15	52	31
00	19	4	15	5
Total	879	165	714	182

[1] 33 Office/Clerical males not counted in these tallies due to government xerox error.

[From the Plain Dealer, Feb. 4, 1981]

BIAS FINDING ON CHICAGO BANK MAY APPLY HERE

(By Elizabeth Sullivan)

A Labor Department administrative law judge has found that Chicago's third largest bank discriminated against women and minority group employees.

If the judge's ruling is approved by the secretary of labor, it would set a precedent in sex and race discrimination cases in the banking industry that could affect pending federal action againt National City Bank and possibly other banks here.

National City officers declined comment yesterday.

Judge Rhea Burrow found Harris Trust & Savings Bank in Chicago guilty of discriminating against women and minority group employees over a four-year period, and tentatively awarded $12.2 million in back pay to past and present employees discriminated against and salaries and promotions.

Burrow also recommended that Harris Tust be barred from all federal business until the back-pay payments are made and deficiencies in employment practices corrected.

The bank handles about $7 million a day in Treasury Department deposits.

It is the first time an employment discrimination case against a bank has gone that far. In the past, cases were settled or dropped before they reached an administrative law judge.

The ruling followed a complaint issued in December 1977 by the Labor Department against the bank, and stemmed from charges filed in 1974 by Women Employed, a group of Chicago office workers.

Burrow said yesterday that Harris Trust refused to provide documents needed to determine precisely the back-pay awards. If the ruling is upheld, he said, the Labor Department will have the right to examine the documents and change its back-pay demands.

Burrow said he based his decision on bank records showing men held all the top jobs at Harris from 1974 through 1977, while women were clustered in lower-paying jobs "throughout all departments of the bank."

He said the number of affected employees varied depending on the year. By one estimate, about 1,000 women and 300 minority-group members would be eligible for back-pay awards if the ruling goes through.

President Reagan's choice for labor secretary, Ray Donovan, a New Jersey contractor, was confirmed by the Senate yesterday. He must approve Burrow's decision for it to take effect.

The bank could then appeal the decision through the courts. But once the finding against it is confirmed, the bank will face immediate debarment from federal business, according to Karin Pedrick, an equal opportunities specialist in the Labor Department.

Department action against National City, Cleveland's second-largest bank, is still in pre-trial stages. An official complaint was issued last May against the bank, charging it discriminated against past and present women and minority group employees. The bank and the government have since been scrimmaging over pre-trial issues such as document exchange.

Cleveland Women Working, the office workers group which did the original 1978 study accusing Cleveland banks of sex and race discrimination in employment policies, has been named a third-party intevenor in the case.

A Labor Department spokesman yesterday said still pending are department cases against Union Commerce and Central National banks here. However, meetings are scheduled with representatives of both banks within the next two weeks that could resolve the government's criticisms of those banks' policies.

The department issued a show-cause notice against Union Commerce Aug. 24, 1979, signaling it believed there were deficiencies in that bank's employment practices. A show-cause order was issued against Central National March 24, 1980.

A similar Labor Department case against AmeriTrust Co. was dropped about a week ago, the spokesman said. Although a show-cause order had also been issued against AmeriTrust, the department apparently decided it did not have a case against that bank at this time.

[From the Wall Street Journal, July 29, 1980]

BIASED BANKS? JOB PRACTICES IN BANKING COME UNDER GREATER SCRUTINY

The Labor Department's contracts-compliance office makes banks a top target for affirmative action reviews. Of the 427 banks investigated since October, 52 have agreed to improve the hiring and promotion of women and minorities. The agency accuses Cleveland's National City Bank of discrimination, and may soon issue similar complaints against two or more Ohio banks.

Activists also pressure banks to remedy job bias. Working Women, a coalition of officer-worker groups in 12 cities, launches a drive against 50 banks. It already claims victories, as several Boston and Baltimore banks raise workers' salaries and begin posting notices of higher-level job openings.

Unfazed by the spotlight, a banking-industry offical cites the quadrupling of women and minorities in bank managerial jobs since 1970.

[From the American Banker, May 23, 1980]

UNITED STATES FILES BIAS CHARGE ON OHIO BANK

(By Suzanna M. Andrews)

WASHINGTON—The $2.3 billion-deposit National City Bank of Cleveland stands to lose about $1.5 billion in Federal contracts if a Labor Department administrative judge upholds a complaint filed this week charging the bank has violated Federal employment standards for women and minorities. An administrative suit was filed against National City Bank, Ohio's third largest bank, by the department's Office of Federal Contract Compliance Programs.

The government suit called for "the immediate cancellation, termination, and suspension" of all National City Bank's current government contracts and subcontracts. It also recommended the banks' debarment from future government business.

The Cleveland bank falls under Federal Equal Employment Opportunity laws because it is a Federal contractor. In 1979, it handled a total cash flow of $1.5 billion in Federal tax deposits.

However, National City's Federal deposit Insurance would not be cancelled under the terms of the complaint.

The Labor Department charged that National City discriminates against women and minorities in its hiring, promotion and wage practices. The complaint also charged the Cleveland bank failed to develop an effective affirmative action program for women and minorities.

J. Robert Killpack, president of National City, said Thursday in a statement that the Labor Department action was unfounded.

"The bank's employment practices are not discriminatory. Hiring, promotions and salaries are based on standard criteria, namely education, experience and performance without regard to race or sex," he said.

The bank pledged a "vigorous" defense and expressed confidence that "when the facts are presented in an administrative hearing" it will be found "in full compliance with the law."

REVIEW BEGAN IN 1978

Debra Rubin, a Labor Department spokesperson, said in an interview that the OFCCP began a compliance review of the bank's employment practices in late 1978.

She said that the office concluded its investigation into National City Bank last July and, after informing the bank of its findings, issued a 30-day warning to the bank. This notice asked the bank to remedy deficiencies in its affirmative action plan or face further Federal proceedings, according to Ms. Rubin.

She explained that when National City denied those charges, the government instituted legal proceedings which resulted in the administrative complaint announced Thursday.

It was understood that the bank has 20 days from May 20, 1980, to agree to the charges or the complaint will be sent to an administrative law judge who then will hold hearings. The judge then will make a recommendation to the Secretary of Labor, whose final decision could then be appealed in the courts.

The legal proceedings could take "several years," Ms. Rubin said. She added that National City could opt for a settlement at any time, which would stop the hearings.

Ms. Rubin said the government would seek a settlement which would include a requirement that the bank develop a program "for getting women and minorities in appropriate positions."

The government also could require the bank to reimburse current and past employees for wages they missed because of the bank's alleged discriminatory practices, she added.

$15 MILLION IN BACK PAY

It was estimated that back pay which could be required as part of a settlement would amount to $15 million, but Ms. Rubin said she could not confirm that.

"We feel there is practically no basis for the back pay claims," Julian L. McCall, chairman of National City, told shareholders last month.

Mr. Killpack said Thursday that last summer National City participated in negotiations with the OFCCP and "a number of points were resolved at that time."

"OFCCP officials for more than six months did not renew earlier discussions as promised and then, without further investigation, filed a complaint," he said. The government's investigation of National City coincided with charges filed with the Labor Department by an interest group called Cleveland Women Working. This is an affiliate of a national organization of women office workers called "Working Women."

In the fall of 1978 the group published a 90-page report criticizing the employment practices at National City and three other large Cleveland banks—Ameritrust, Central National and Union Commerce.

Currently, Labor Department charges of employment discrimination are pending against two banks—the $619.3 million-deposit National Bank of Commerce, San Antonio, Tex., and $4.9 billion-deposit Harris Trust & Savings Bank, Chicago.

The suit against the Texas bank is now before the Secretary of Labor. The hearings on the charges against Harris were completed last December. The results are being reviewed by the administrative law judge.

Of all the banks under contract with the Federal government, 72 are currently under investigation by the OFCCP for possible discrimination in their employment practices, she said.

The Labor Department last year decided against Uniroyal Co. on similar charges of violating Federal affirmative action standards, Ms. Rubin said.

[From the Wall Street Journal, May 23, 1980]

NATIONAL CITY BANK OF CLEVELAND ACCUSED OF JOB DISCRIMINATION

WASHINGTON.—The Labor Department charged National City Bank of Cleveland, a unit of National City Corp., with discriminating against women and minorities.

In an administrative complaint, the agency alleged that job bias exists in such areas as salary levels, selection procedures, promotions, recruitment, placement and training. An investigation by the department's Office of Federal Contract Compliance Programs found that a sizable number of the bank's 1,400 women and 200 minority members were "suffering the present effects of past discrimination," said Donald Elisberg, Assistant Secretary for Employment Standards.

In Cleveland, National City Bank said the charges were totally "unfounded." It pledged a "vigorous" defense and expressed confidence that "when the facts are presented in an administrative hearing" the bank will be found "in full compliance with the law."

J. Robert Killpack, president, said the bank's hiring and promotion policies are "based on standard criteria" such as education, experience and performance without regard to race or sex.

The investigation grew out of complaints filed by Cleveland Women Working, one of 12 affiliates of Working Women, National Association of Office Workers.

National City Bank has 20 days to settle the complaint or seek a hearing before an administrative law judge. The hearing officer could recommend that Labor Secretary Ray Marshall bar the bank from future government business and cancel existing contracts. In 1979, the bank handled about $1.5 billion in federal tax deposits, according to a department spokeswoman; it also issues and pays U.S. Savings Bonds and notes.

An administrative law judge also may recommend a back-pay award. The agency's initial investigation suggested bank employees and applicants could be due as much as $15 million, the spokeswoman said. "But we don't know. It may be less, depending on the size of the affected class and how much back-pay they're entitled to," she added.

In addition to a back-pay award, Working Women hopes to win a revised affirmative-action program and posting of job openings for National City Bank employes, said Ellen Caddedy, the group's program director.

National City bank is the third bank to be cited for allegedly violating a federal executive order prohibiting employment bias by concerns doing government business.

An administrative law judge has yet to issue a decision on charges against Harris Bank & Trust Co. of Chicago. Another administrative law judge has urged Secretary Marshall to take away U.S. deposits from National Bank of Commerce of San Antonio, Texas, also accused of discrimination, according to the spokeswoman.

[From the Washington Star, May 1980]

UNITED STATES PROBING 72 BANKS FOR JOB DISCRIMINATION

(By Lance Gay)

The Labor Department is investigating employment practices at 72 banks as part of a nationwide probe of job discrimination against blacks and women in the banking industry.

The Labor Department's Office of Federal Contract Compliance Programs yesterday filed an administrative complaint against the National City Bank of Cleveland—the 54th largest bank in the nation. It charged the bank with widespread and pervasive employment discrimination against women and blacks.

A similar complaint against Harris Bank & Trust of Chicago—24th largest in the nation—is currently being processed by an administrative law judge.

And a proceeding against a third bank, National Bank of Commerce of San Antonio, Texas has been affirmed by an administrative law judge and is awaiting a final decision by Labor Secretary Ray Marshall.

Debra K. Ruben of the OFCCP said the banks could lose their positions as federal depositories if the complaints are upheld and Marshall decides to debar them from receiving government contracts.

Although federal insurance provisions on bank deposits would not be affected, the Labor Department will forward any adverse findings to the banking regulatory agencies, she added.

The banks fall into the jurisdiction of OFCCP—the agency which oversees compliance by contractors with equal employment laws—because banks act in the role of a federal contractor through federal bank insurance benefits, as part of the federal depository system and as issuing agents for U.S. savings bonds, she said.

Ruben said that last year, the Cleveland bank handled about $1.5 billion in federal tax deposits.

The Cleveland bank is listed by federal officials has having $2.4 billion in total deposits. Chicago's Harris had some $4.9 billion in deposits last year and the San Antonio bank had $619 million in deposits.

National womens' groups heralded the Labor Department's action against the Cleveland bank as a major breakthrough. The group said that if the complaint is upheld, the bank will have to pay up to $15 million to employees allegedly discriminated against.

J. Robert Killpack, the bank president, denied the bank had engaged in employment discrimination and called the complaint "unfounded."

"When the facts are presented in an administrative hearing," he said, "the bank will be found in full compliance with the law."

Donald Elisburg, assistant labor secretary for the employment standards administration, said that his agency's 7-year investigation found a substantial number of the bank's employees "suffering the present effects of past discrimination." The bank has 2,500 employees.

"The job bias in this bank appears to be traditional and deeply rooted," said Elisburg. "Despite equal employment opportunity gains women and minorities have made elsewhere, existing discrimination has apparently held back their progress at this bank."

Elisburg said evidence of job bias was found in such areas as salary levels, selection procedures, promotions, recruitment, placement and training.

At a press conference coinciding with the Labor Department's announcement, Gita Reid, a former bank employee, said that her firing in June 1978 sparked an investigation by Cleveland Women Working Against National City Bank. Reid charged that she was fired unfairly because she was interested in advancement from head teller and "made the mistake of telling my manager so."

She said that as a result of an investigation of conditions in the banking industry in Cleveland, the department of labor also is investigating three other Cleveland banks—Ameritrust, Central National and Union Commerce.

[From the Cleveland Press, Aug. 17, 1981]

National City Owes Women, Minorities Millions, United States Says

A Labor Department official said today that its finding of discrimination by National City Bank call for makeup payments involving millions of dollars to women and minority employees.

"This amount is negotiable but our findings are in this range," said Jay Sauls, assistant regional administrator of the Office of Federal Contract Compliance Programs in Chicago.

He disclosed that his agency also has issued findings involving discrimination against Union Commerce Bank.

The hiring and promotion practice by Cleveland Trust Co. and Central National Bank also are under review, but no findings have been issued yet, Sauls said.

National City Bank President J. Robert Killpack acknowledged that the federal agency has charged that back pay is due to women and minority employees, but declined to disclose the amount.

"We have met with them to discuss their complaint but we felt these were confidential discussions," Killpack said. "These are long, slow processes."

The federal office on July 16 has set a 30-day deadline for Central National to agree to correct alleged deficiencies, but now the bank will be given additional time because of a defect in the notification process, Sauls said.

At Union Commerce Bank, Vice President Daniel Daugherty said it had just received the federal notice of deficiencies involving women and minorities, and had no comment until it was studied further.

Sauls said, "We are talking to National City Bank about having an active program, not one that is put on a shelf, that will involve hiring, promotion and accelerating training of women and minority employees.

"It deals with getting these people into their rightful place, and not only menial positions."

Cleveland Women Working initiated the complaint against National City Bank, charging it has failed to move women and minority employees into higher-paying jobs.

[From the Plain Dealer, July 31, 1979]

National City Bank Faces Deadline

(By Jayne A. Thompson)

National City Bank, one of the most profitable banks in the nation, has 25 days to improve its affirmative action policies toward women and minorities or face a formal complaint by the U.S. Labor Department.

The Labor Department issued National City a "show-cause" notice July 16 after a 10-month investigation by equal opportunity specialists who reviewed the bank's affirmative action plan, examined personnel records and interviewed employees.

The department warned National City that refusal to resolve the situation in 25 days could result in enforcement proceedings, which could mean a loss of federal deposits.

Cleveland Women Working, a group advocating equal treatment for working women, filed a formal complaint last year with the Office of Federal Contract Compliance Programs (OFCCP) in Washington.

The group charged Cleveland's second largest bank discriminates against women and minorities.

"We are positive from our own research that there is widespread discrimination there," said Helen Williams, director of Cleveland Women Working. "We knew if the government investigated it, they would find it."

Theodore W. Jones, National City executive vice president, declined to discuss the allegations. A statement by the bank's public relations department said the Labor Department's investigation was "superficial" and "inaccurate."

"It is unfortunate that the OFCCP was unwilling to wait for a few days until the bank provided a full response but instead elected to issue a show-cause notice," the statement said.

The Labor Department's findings were not made public, Ms. Williams said. However, she said, the "show-cause" notice may indicate the federal agency found discrimination at the bank.

Ms. Williams said 66 percent of National City's employees are women and the majority of them are in low-paying clerical positions. Women are not encouraged to enroll in management training programs, while men are, she said.

[From the Cleveland Press, July 31, 1979]

National City Bank Told To Move on Equal Rights

National City Bank has been ordered by the U.S. Labor Department to act within 30 days on equal opportunities for women and minority employees or face legal action, Cleveland Women Working announced.

National City Bank officials said they will respond to the findings by Aug. 10.

The legal action could result in the bank losing federal deposits and the right to sell government bonds.

The women's group, representing office workers, brought a complaint against the bank last year.

It charged that National City Bank discriminated against women and minorities in hiring, pay, promotions and other practices.

The Labor Department completed its investigation in April and submitted its findings to the bank.

[From the Cleveland Press, Jan. 12, 1979]

TWO BANKS HERE PROBED, SEX BIAS IS CHARGED

(By Peter Almond)

A senior federal official has heard directly from women in Cleveland about alleged discriminatory practices of two city banks, National City and Union Commerce.

The banks are under investigation by the U.S. Labor Department's Office of Federal Contract Compliance Programs (OFCCP) for alleged discrimination against women and minority employees.

Last night at Old Stone Church, Jay F. Sauls, assistant regional director of OFCCP's Region 5 in Chicago, attended a meeting of Cleveland Women Working and received scores of confidential reports of discrimination from women employees of the two banks. Cleveland Women Working has been compiling information on such complaints.

Sauls said his office has already received four written complaints about the two banks, prompted in large part by Cleveland Women Working, which last year produced a detailed report on alleged discrimination at Cleveland's five largest banks.

The OFCCP has begun inspections of the banks, although Sauls would not diclose what has been found.

One woman who alleged discrimination last night was Geta Reid, who told the group of about 60 women that she was fired by National City last June for "insubordination."

The firing came within hours after a minor incident and without recourse of appeal, even though she had never had a bad review after 2½ years' employment at the bank, she said.

It came, she said, after she had written a letter to a superior requesting a more responsible job for which she said she was qualified.

Other women made general complaints that banks do not post job opportunity openings available to women, that despite an average 63 percent female employment ratio in banks here, only 3 percent of the managerial jobs are filled by women.

Cleveland Women Working has made a particular target of National City, partly, it claims, because the bank is one of the most profitable in the country and may be termed a national trend setter. Last month the organization gave the bank its "Scrooge of the Year" award.

Sauls told The Press that the OFCCP is very interested in Cleveland's bank discrimination reports. The banking industry, he said, has been targeted nationally because of the large number of complaints from women employees.

He said court action is currently underway against the Harris Trust of Chicago because of discrimination, and he said an agreement has been reached with Chase Manhattan Bank of New York to establish satisfactory affirmative action programs.

[From the Cleveland Press, Dec. 26, 1978]

WOMEN WORKING PICK "SCROOGE OF THE YEAR"

National City Bank has received the "Scrooge of the Year" award, but not from Major Kucinich.

The dubious distinction was bestowed upon the bank by Cleveland Women Working at the bank's headquarters at 623 Euclid Ave., "for its miserliness with its female and minority employers," according to Carol Kurtz and Helen Williams of CWW.

A mime dressed as Ebeneezer Scrooge distributed gifts to bank employees while a delegation of CWW members tried to ascent to the bank's executive offices to present the award and a Christmas "gift list" for employees to Claude Blair, chairman of the board.

Security officers, however, would allow only one representative of CWW, but no members of the press into the executive precincts, according to Ms. Williams.

CWW member Carol Kurtz was invested with the mission of presenting the award and list to Blair. Blair, however, was not in. Accepting the award for Blair was his secretary, who told Ms. Kurtz that the chairman was on his way to the airport.

The gift list asks the following: the posting of all job openings, pay increases, training programs for women and members of minority groups, and promotions and career counseling for women and minority-group employees.

"We know of women who have worked full-time for National City for several years who are the sole support of their children and make so little money they qualify for food stamps. This is deplorable treatment from a bank which boasts of the highest profits of any such institution in the U.S.," said Ms. Kurtz.

National City and Union Commerce Banks are being investigated by the U.S Labor Department for alleged discrimination against employees who are women and members of minority groups. The investigation was begun after a 90-page study of working conditions at the banks was released by CWW last July.

National City was one of six banks that refused to refinance $14 million in loans to the city. That refusal plunged the city into default last Friday.

National City was the first recipient of CWW's Scrooge Award. Ms. Williams said CWW expects to present the award annually.

[From the Cleveland Press, Aug. 22, 1978]

UNION COMMERCE WARNED BY UNITED STATES ABOUT SEX BIAS

Cleveland Women Working's campaign against Cleveland's five largest banks for alleged discrimination against women and minority employees has brought about a warning against Union Commerce Bank from the federal government.

The U.S. Labor Department's Office of Federal Contract Compliance Programs notified the bank that its affirmative action plan did not meet government requirements and if the deficiencies were not corrected further action would be taken against it.

Cleveland Women Working says Union Commerce, if it does not correct the deficiencies, must show cause why it is unable to do so, or face withdrawal of federal deposits.

According to the organization, which represents women office workers, such a show-cause notice has been issued only twice before during compliance reviews of U.S. banks.

The federal action came about one month after Cleveland Women Working presented the agency a 90-page report on employment practices of the five largest banks here, claiming that women and minorities are at the bottom of the economic ladder in the banks with small chance for significant advancement.

"Union Commerce Bank was by no means the worst bank in terms of female and minority employment," said Carol Kurtz, CWW staff person. "So we certainly expect that more action will be forthcoming against other Cleveland banks."

[From the Plain Dealer, Aug. 22, 1978]

UNITED STATES ASKS UNION COMMERCE JOB DATA

(By Donald Sabath)

Union Commerce Bank here has been told by the Department of Labor to provide more information on its affirmative action plan concerning the hiring of women and minority groups.

The request was issued by the Office of Federal Contract Compliance Programs in Washington on July 31. This was in a "show cause" action.

Lyman H. Treadway, chairman, president and chief executive, said the bank has fullfilled all government requests and believes it conforms with the affirmative action program.

"The government is only seeking additional information from our program which was filed last May," said Treadway. "We know we are following the law."

The government allows 30 days for a corrective review of the affirmative action plans or an addition to the submitted plan. Federal officials said noncompliance could result in withdrawal of all federal deposits.

The government's action comes just a month after Cleveland Women Working gave the federal agency a 90-page report stating that Cleveland banks are short-changing women and minorities.

The report charged that Cleveland's five largest banks place women and minorities at the bottom of the economic ladder with little opportunity for advancement.

Helen Williams, a spokesman for the group, said the request for more data from Union Commerce, resulted from the report.

"Cleveland Women Working believes that the main reason Union Commerce Bank was singled out as the first Cleveland bank to receive a 'show cause' notice may be because they simply failed to use the proper categories to report employe information and failed to supply proper salary data to the government," she said.

Carol Kurtz, a staffer at Cleveland Women Working, said: "Union Commerce Bank was by no means the worst bank in terms of female and minority employment in our study, so we certainly expect that more action will be forthcoming against other Cleveland banks as the federal compliance office continues its investigation."

Treadway said the compliance office was "working with old information."

"This is just a misunderstanding, as the reports have been transferred from the Treasury to the Labor Department. We have not been criticized, but the government is just seeking more information," he added.

Cleveland Women Working represents office workers trying to win fair and equal treatment for working women.

[From the Cleveland Press, Feb. 20, 1978]

SEX BIAS CHARGED AT BIG BANKS

(By Mary Swindell)

An organization of Cleveland working women is trying to prod the U.S. Treasury Department to force local banks to live up to their affirmative action pledges.

After meeting with a delegation from Cleveland Women Working, Harold Liggens, director of the Cleveland Office of Federal Contract Compliance here, agreed to forward information on allege sex and race discrimination in Cleveland banks to the regional OFCC in Chicago and national headquarters in Washington, D.C.

"The Treasury Department has its own contract compliance department which is supposed to review the affirmative action plans of financial institutions. But Treasury reviews only 5 percent of those plans a year," said Cathy Tombow, a CWW member who met with Liggens.

Using the Freedom of Information Act, CWW in 1976 obtained from the Treasury Department copies of the affirmative action plans of the five largest local banks, Ms. Tombow said. They are Central National, Cleveland Trust, National City, Society National and Union Commerce Banks.

One bank's affirmative action plan contained no statistics on the number of women and members of the minority groups it employs or what jobs they hold.

But CWW culled these statistics from the affirmative action plans of the other four banks:

Of the 8,183 people they employ, over 5,000, or two-thirds, are women. Women comprise 16.4 percent of bank officials and managers, men 83.6 percent. Women are 21.7 percent of professionals, men 78.3 percent. The vast majority of women employees—86.6 percent—are clerical and office workers while men comprise 13 percent of this category.

But there is discrimination against women even in the managerial category which claims 16.5 percent of female bank employees, Ms. Tombow said. Women in that category are likely to be administrative assistants, assistant managers or head tellers, while the men hold down the prestigous departments such as loans and trust or international banking, she said.

The CWW survey of the plans also found widespread discrimination against women in management training programs and electronic data processing work.

In two of the banks, less than 2 percent of the officer and manager positions were filled by black men and the employment of black women in those categories was so low that it could not be reported statistically, the CWW study said.

Liggens said that the Treasury Department has conducted compliance reviews of the leading financial institutions here.

"Treasury says they find the banks in compliance (with federal equal employment regulations). The women say they're not in compliance. There's the conflict," Liggens said.

"We're not questioning the fact that Treasury has conducted reviews," said Ms. Tombow. "We're questioning the reviews themselves.

"For instance, Treasury approved the 1971 affirmative action plan of one bank and it's the very bank that didn't even supply any statistics on the women and minorities it employs," she said.

[From the Cleveland Press, Dec. 24, 1977]

WOMEN IN BANKING HERE HOLD FEW OF THE TOP JOBS

(By Rusty Brown)

Women in Cleveland's banking industry are being short-changed, members of Cleveland Women Working (CWW) believe.

They have been collecting data and distributing questionnaires to banking personnel here the past few months.

CWW research on women bank workers has revealed the following:

Two-thirds of the 15,000 employees in Cleveland banks are women with an average salary of $6,137. Ninety percent of women in banking make less than $10,000 a year.

Women hold 85 percent of the lower-paying clerical jobs and only 16 percent of the higher-paying managerial jobs.

Salary differences exist between men and women holding identical jobs. For example, some female tellers earn $2,229 less per year than male tellers.

Kathy Tombow, associated director of CWW, says questionnaires also revealed that women in banking have a difficult time cracking the men-only management training program.

At Ohio Savings Association, she says, 1976 figures showed that 68 percent of the new male employees with college degrees, but no work experience, went into Management Training programs. None of the female applicants with similar backgrounds were hired as management trainees.

This information appeared in a charge against Ohio Savings Association filed by CWW with the Equal Employment Opportunity Commission.

EEOC investigated the charge and concluded in a statement last August that at Ohio Savings, "there is reasonable cause to believe women are not provided comparable training opportunities for advancement to supervisory and management jobs equal to those males receive."

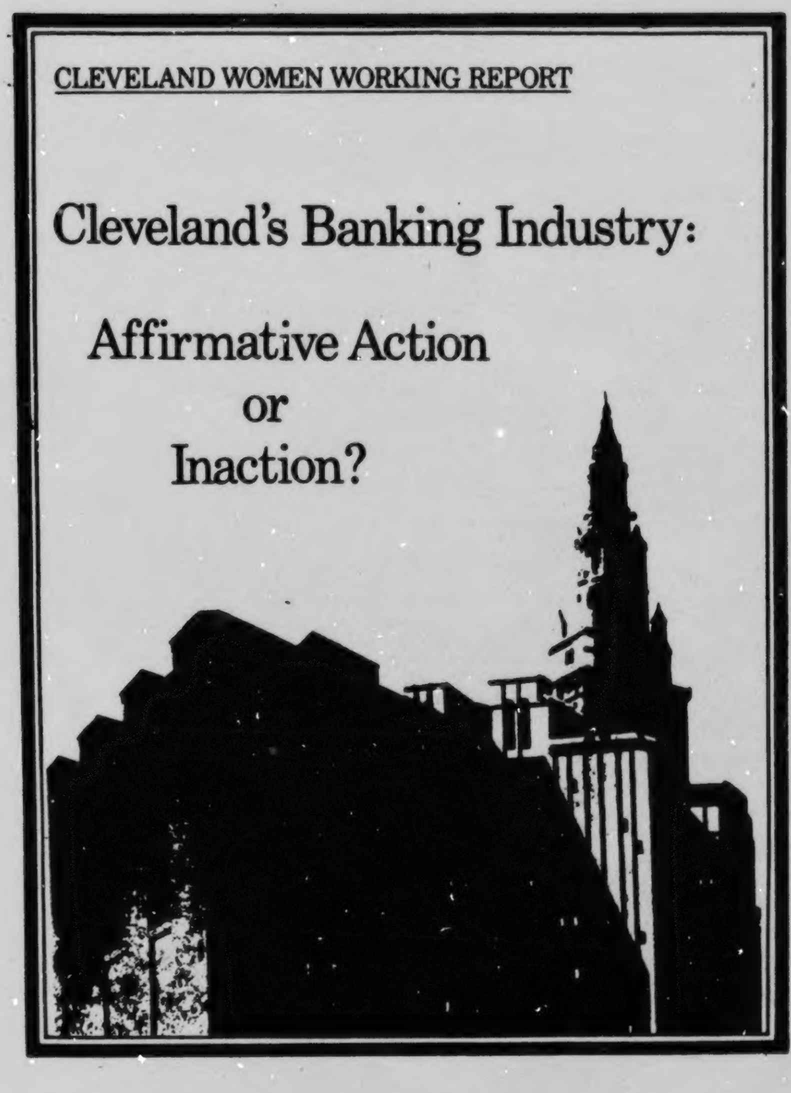
Since then, EEOC, CWW and Ohio Savings Association have been in conciliation to correct inequities.

Another key issue for women in banking in Cleveland concerns job descriptions. "The women surveyed," says CWW Director Helen Williams "tell us there's a lack of information about what qualifies a person for different jobs.

"If official job descriptions were made more available, they feel more women would find themselves eligible."

Cleveland Women Working hopes to interest federal equal rights agencies and the U.S. Treasury Department in investigating the banking situation here.

CWW is a two-year old organization of women office workers concerned about problems on their jobs. Their headquarters is at 1258 Euclid Ave.



CLEVELAND WOMEN WORKING REPORT

Cleveland's Banking Industry:

Affirmative Action
or
Inaction?

Chicago Association of Commerce and Industry

130 SOUTH MICHIGAN AVENUE, CHICAGO, ILLINOIS 60603 · 786-0111

WILLIAM A. PRICE
DIRECTOR, GOVERNMENTAL AFFAIRS

October 12, 1981

Mr. Edward Cooke
Staff Counsel
Employment Opportunities Subcommittee
House Education and Labor Committee
2181 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Cooke:

The comments submitted to your Committee concerning the EEOC and the CFCCP may have been submitted in improper form. A correct and full copy is attached. My apologies for any inconvenience that may have been caused by the possibly incorrect submission.

Cordially,

Wm. A. Price

William A. Price
Director, Governmental Affairs

WAP:jam
Enclosure

CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY

August 11, 1981

Mr. Edward Cooke
Employment Opportunities Sub-Committee
House Education and Labor Committee
2181 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Cooke,

I have enclosed the Chicago Association of Commerce and Industry's Comments on the Office of Federal Contract Compliance Programs.

The enclosed comments expressly reaffirms C.A.C.I. support of Equal Employment Opportunity and the concept of Affirmative Action. Also, comments directed at the OFCCP proposed regulations are to further our position and focus on supporting and suggesting changes to reduce the compliance burden on government contractors.

Thank you for your time, and if we can be of any further assistance to you, please contact Bill Price, Director, Governmental Affairs, CACI.

Sincerely,

Samuel R. Mitchell

Samuel R. Mitchell
Chief Executive Officer
Chicago Association of
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CHICAGO ASSOCIATION OF COMMERCE AND INDUSTRY

COMMENTARY OF THE
CHICAGO ASSOCIATION OF
COMMERCE & INDUSTRY
RE: REFORM OF THE OFFICE OF
FEDERAL CONTRACT COMPLIANCE PROGRAMS
AND THE EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

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The Chicago Association of Commerce and Industry (CACI) appreciates the opportunity to comment provided by this forum. CACI is a voluntary organization of business and professional leaders working together to promote the commercial and industrial growth of Metropolitan Chicago and to foster civic improvements that benefit the general welfare of all who live and work in the area. CACI is in its 77th year of operation as the principal representative of the Chicago area business and industrial community and represents 6500 business and 1600 individual members, who employ over 1.2 million workers.

CACI POSITION RE: THE EEOC

The Equal Employment Opportunity Commission is, and clearly should be, the agency primarily concerned with the enforcement of the anti-discrimination laws. It has statutory authority, experience and expertise with regard to complaint processing, conciliation and litigation of claims of past and present discrimination by employers. CACI believes the EEOC's role in this area should be enhanced by removing such activities from other less experienced agencies and concentrating them at the EEOC. However, certain modifications of the EEOC's stance toward case processing are needed to make it more effective. Additionally, EEOC's guidelines in the areas of testing and sexual harassment, and prospective guidelines on job evaluation systems must be re-examined because of their overly broad and unduly burdensome nature. Finally, the EEOC must re-evaluate its position with regard to the economically unviable "comparable worth" theory.

I. EEOC CASE PROCESSING

Significant improvements in case processing have been made at the EEOC in the last several years. These improvements occurred due to institution of the Rapid Charge Processing System. The system concentrates the efforts of the field offices on the speedy investigation and resolution, by mutual settlement, if possible, of the individual harm alleged by a party charging discrimination. Cases of "class" or "systemic" discrimination generally must be referred to EEOC Headquarters for consideration and processing, or may, in certain defined instances, be handled by field offices under the Early Litigation Identification program. For a period of time, this system was operating with a high degree of success to eliminate EEOC's tremendous charge backlog.

EEOC's existing backlog was due to its treatment of each charge as a "class" charge requiring a time-consuming, wide-ranging investigation. Rapid Charge Processing was designed to eliminate such unwarranted expansion of individual charges by making "class" investigations subject to prior review, by EEOC Headquarters in most cases. Unfortunately, EEOC field offices seem to be returning to their old case processing methods, and are again utilizing many individual charges as vehicles to launch broad "class" investigations. As a result, it is possible that EEOC will be saddled with a new large backlog of cases.

Adding to a backlog is the EEOC's assertion of jurisdiction over cases that are clearly untimely. For unfathomable reasons, in light of its current problems in keeping up with the flood of charges, the EEOC has deliberately misinterpreted the Supreme Court's holding in Mohasco v. Silver, 100 S.Ct. 2486 (1980), and has taken the position, in Interim Procedural Regulations, 45 Fed. Reg. 81039, (December 9, 1980), that a charge is timely filed within 300 days in states with deferral agencies, even if no charge was timely filed with that deferral agency. Thus, if one lives in a state with a deferral agency, one has 300 days to make an initial charge of discrimination under Federal law; if one has the misfortune to reside in a state without such an agency, one is limited to the statutory 180 days. The absurd and unfair result of this position is a fluctuating limitations period in Title VII cases; a flood of litigation seems certain to result from this EEOC position.

An important criticism directed at the Rapid Charge Processing system is of the extremely heavy pressure placed upon respondents to settle cases - even clearly non-meritorious cases. This pressure apparently exists due to the EEOC's evaluation of the performance of case processing personnel on the basis of the number of charges quickly settled, rather than charges appropriately resolved.

The problems can be rectified easily, through a set of internal directives to the field offices. These directives should emphasize that the appropriate resolution of cases, rather than "getting the Charging Party something" will be rewarded and that plainly non-meritorious cases be dismissed without a lengthy investigation or conciliation process; should recall the goals and methods of Rapid Charge Processing, including face-to-face fact finding, to field personnel, and place decisions regarding the pursuit of "class" investigations where they belong - at the EEOC National Headquarters; and should withdraw the timeliness regulations asserting jurisdiction where case law and its own statute would find none.

II. EEOC GUIDELINES

The technical activities of the EEOC in issuing guidelines in several areas of Title VII law requires closer analysis. Testing and job evaluation systems have been areas of continuing concern to the EEOC. The Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. Part 1607 (1978), were jointly promulgated, after much delay, by EEOC and other agencies. The intent of the Guidelines was, or should have been, to assist employers in designing legally permissible, yet effective, testing procedures. In fact, the Guidelines have produced a virtual moratorium on testing due to their complexity and the extreme difficulty of "validating" tests as nondiscriminatory under the Guidelines. This result is in part due to the EEOC's failure adequately to consider or respond to professional and public criticism of the Guidelines before their adoption. Schlei & Grossman, Employment Discrimination Law, 1979 Supplement, 31-31 (1979). CACI recommends that the Uniform Guidelines be reopened for comment and modified to embody advances in testing theory that have occurred in the past several years. New Guidelines should be directed toward a practical result which allows for the reasonable use of testing.

Closely allied with EEOC's assault on testing is its antipathy to generally accepted job evaluation systems. EEOC has commissioned a study of such systems by the National Academy of Sciences. The preliminary study report suggested that all evaluation systems are inherently biased, and indicated that NAS was attempting to draft a non-biased job evaluation system which would replace the present systems. Although it is long overdue, no final report has been issued.

CACI believes that the study of job evaluation procedures should be halted, unless a significant commitment to utilize the services of experienced professionals in this field is made. Otherwise, like testing, employers may be faced with virtual elimination, through EEOC Guidelines, of evaluation systems which have been in place and working well for decades, and which have not been adjudged to be discriminatory.

We note that the EEOC's Sexual Harassment Guidelines, 29 CFR Part 1604.11 (1980) also have been the subject of vigorous public debate and examination. We agree that some modified form of these Guidelines should be issued in an effort to alert employers and employees to the legal and moral responsibility to provide a workplace free of sexual coercion. However, the Guidelines' attempted imposition of strict vicarious liability upon employers for the acts of the public, other employees and supervisors, should be eliminated. Strict liability should be replaced with a standard that gives an employer a chance to remedy instances of harassment which are brought to its attention. Additionally, the vague, personally subjective definition of sexual harassment ("unwelcome sexual advances") should be replaced with clearer and more objective language.

III. EEOC POSITION ON "COMPARABLE WORTH"

"Comparable worth," a concept which focuses on the comparison of jobs across, rather than within, occupations has been another subject of recent EEOC scrutiny. Past statements of EEOC personnel have indicated a ready acceptance of comparable worth as a tool to eliminate perceived inequities in the job market. Sex discrimination has been the primary focus of proponents of the theory, but it conceivably could be utilized in other areas of discrimination. The Supreme Court recently declined to adopt the "comparable worth" theory in Gunther v. County of Washington, ________________ S.Ct. ________________ (1981). However, it is likely that this one Supreme Court decision will not be entirely dispositive of this controversial theory.

There can be little doubt of the results of application of the comparable worth theory to employers by EEOC. Application of the theory would require pervasive entry of the Government into the salary-setting process of all private businesses, to the extent of there being one "right" way to establish salaries. Even if such intrusion were practically possible, the ultimate result would be replacing the judgment of business with the judgment of government bureaucrats.

Obviously, such an intrusion of Government into the private employment is undesirable. CACI suggests that EEOC adopt a construction of Title VII that rejects the "comparable worth" theory. EEOC could thus declare, lawfully and with judicial precedent such as Lemons v. City and County of Denver, 620 F.2d 228, (10th Cir. 1980), that "comparable worth" is neither a legally sound theory nor one which could be feasibly administered as a regulatory measure. That position would be in full consensus with the Supreme Court's holding in Gunther, and would not preclude the EEOC from seeking redress in cases of intentional wage discrimination of the type alleged to have existed in Gunther.

CACI POSITION RE: THE OFCCP

The membership of CACI endorses and supports the original concept of affirmative action. No argument can be made that those who benefit from doing business with the government should not take affirmative action, i.e. make extra effort - to ensure their employment practices afford equal access and equal opportunity to all. We believe that ensuring equal opportunity was the intended purpose of the concept of affirmative action, and we believe that a return to that original purpose is sorely needed.

Originally, there was a vision of American business seeking to provide equal employment opportunities to all of our nation's diverse population. The OFCCP has obscured that vision, leaving frustrations and resentment on all sides. The OFCCP, in its practices and by its regulations, has turned from a role of fostering progress in equal employment opportunities to that of enforcing a runaway bureaucratic nightmare. It has defined its own authority, becoming an exponent of theories of discrimination far beyond the Congressionally mandated bounds of the Civil Rights Act.

CACI endorses a return to the original objective of Affirmative Action by a revised Executive Order that would reaffirm a commitment to encouraging and assisting prospective affirmative employment efforts. In the alternative, CACI would support major changes to current regulations implementing the Executive Order.

I. THE ADMINISTRATION OF EXECUTIVE ORDER 11246 HAS UNDERMINED ITS PURPOSE AND UNDERLYING OJECTIVES

The regulations issued pursuant to Executive Order 11246, and the enforcement practices of the Office of Federal Contract Compliance Programs, have corrupted the original intent and purpose of the Order. The Order was promulgated to ensure that government contractors would make special efforts to provide equal employment opportunity. OFCCP instead has imposed a requirement of equal employment results. It has exceeded its charter and authority, and has imposed back-pay liability and other remedial relief upon contractors whose work forces do not reflect the OFCCP's expected statistical results. Actual opportunities available and employer progress in increasing the employment of minorities and women, are ignored. OFCCP has imposed upon government contractors a maze of detailed statistically-oriented Affirmative Action Program requirements, and turned the Affirmative Action process into a harassing "numbers game."

A. THE IMPOSITION OF BACK-PAY AND OTHER REMEDIAL RELIEF IS UNAUTHORIZED AND DUPLICATIVE OF OTHER AGENCIES' ACTIVITIES

Millions of dollars in back-pay have been paid by contractors. These payments have been compelled by the desire to avoid the costly, prolonged administrative process. Absent access to judicial review or any other prompt remedy for unreasonable administrative action, employers have chosen the less costly alternative of nonresistance. However, no authoritative judicial precedent exists determining that OFCCP is authorized to require back-pay, and the position that back-pay is not authorized has been compellingly briefed.[1]

In addition to its back-pay demands, OFCCP has sought other remedies from contractors similar to those imposed only after judicial findings of discrimination. But OFCCP refuses to recognize Supreme Court decisions defining standards to be utilized in determining the existence of discrimination. OFCCP contends such decisions, which generally interpret Title VII, are not applicable to its administration of the Executive Order program. In reality, OFCCP adopts those decisions it considers "helpful" to its mission, while rejecting "unfavorable" decisions. Thus government contractors are subjected to penalties based on OFCCP's often vacillating views of its mandate, without the safeguards of judical decisions or procedural standards defining the limits of liability for discrimination.

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[1] See attached portions from Brief of Defendant Harris Trust and Savings Bank and the Brief Amicus Curiae of the Equal Employment Advisory Council in United States Department of the Treasury v. Harris Trust and Savings Bank at Appendix II.

OFCCP's emphasis upon remedies normally provided by judicial decrees duplicates the efforts of the EEOC and hundreds of local Fair Employment agencies. This multiplicity of parallel enforcement activities increases the cost of doing business with the Federal government unnecessarily. At the same time this duplicating emphasis on rectifying past discrimination detracts from special efforts to open additional opportunities to the protected classes. OFCCP authority should complement other enforcement efforts rather than duplicate them. That authority should be limited to debarment when efforts to enhance available opportunities for the protected classes have not been made.

B. COMPLIANCE WITH EXECUTIVE ORDER 11246 HAS BECOME A BURDENSOME, HARASSING "NUMBERS GAME"

The imposition by OFCCP of complex and sometimes absurd requirements for the development of specific numerical goals, and its reviews of contractor compliance, are the focus of most government contractors resentment and frustration. The Agency's Equal Opportunity Specialists are notorious for their prosecutorial attitudes and unwillingness to allow for any flexibility even when the facts show a compelling need for departing from rigid, mathematical formulas. This approach is encountered with such regularity that federal contractors have come to believe that the OFCCP has instructed each of its investigators: (a) to assume every company to be discriminating, and (b) not to let the contractor dispel that image by confusing the investigator with the facts.

Abuses in the compliance process abound, and are a sad indication of how far from the concept of Affirmative Action we have strayed. A real opportunity for improving employment opportunities for women and minorities has been lost through inept and arbitrary administration. OFCCP effort is directed toward finding contractors guilty of violating its regulations. As a result, contractor effort is directed toward emerging from reviews as little scathed as possible. Under such inflexible and seemingly hostile requirements the "affirmative" has been lost.

CACI does not believe the whole of American business to be so ill-intentioned and so recalcitrant as to call for the tactics OFCCP has adopted. The OFCCP is training a generation of businesses in everything about how to comply with the minutiae of repressive regulation and nothing about the social good that was affirmative action's aim.

II. ALTERNATIVE APPROACHES TO ACHIEVING EXECUTIVE ORDER 11246 OBJECTIVES

CACI recommends putting the "Affirmative" back into the concept of Affirmative Action. Equal employment law enforcement -- the punitive side of the country's equal employment policy -- should be left to the EEOC, the various state and local agencies which have "deferral status," and the private litigants contemplated as "private attorneys general" by the Civil Rights Act of 1964.

A new Executive Order and the staff chosen to implement it should aim at being constructive, educational, helpful -- the affirmative concomitant of national equal employment policy.

Its implementation should be selective -- concentrating on major government contractors whose employment statistics evidence a substantial shortfall in minority and/or female employment. The Executive Branch should offer such employers aid, counsel, and affirmative suggestions for means by which progress toward achieveing equal employment opportunity could be made. Such assistance should then be followed up by periodic progress audits. If progress in the key segments of their work force (Officials and Managers, Professionals, Technicians, and the other categories designated in the EEO-1 reports) is made, then further counseling should be voluntary with the contractor. If progress is not shown, then inquiry should be made as to whether the affirmative suggestions previously made have been followed. If they have been followed, albeit without success, it should be the task of the administrator to provide further suggestions and help in achieving progress. Only if the suggestions have not been followed should there be reason to question whether the contractor should continue to be qualified to do business with the government.

Thus, affirmative action can be restored by emphasizing the positive and providing help and assistance to contractors on the assumption that they want to provide equal opportunity -- not on what seems to be the current assumption, i.e., that all government contractors want to subvert equal employment policy.

Some progress toward a more rational and constructive program could also be made by regulatory reform. Reform should be directed at developing a less specific, more open-minded approach, allowing for more flexibility in the compliance process. Among specific reforms CACI urges are the following:

A. ELIMINATION OF BACK-PAY REQUIREMENTS

Full relief, including back-pay and reinstatement, is available to victims of discrimination proven under Title VII. The prosecutorial and punitive stance involved in assessing back-pay is counterproductive to what should be OFCCP's purpose of encouraging affirmative efforts to increase employment opportunities. Accordingly, we recommend revision of the regulations to eliminate any assessment of back-pay.

B. ELIMINATION OF DUPLICATIVE COMPLAINT-PROCESSING ACTIVITY

The area of complaint-processing is truly one in which duplication of effort has been rampant, in spite of "OFCCP-EEOC Memoranda of Understanding" to the contrary. The Equal Employment Opportunity Commission should be acknowledged as the agency primarily responsible for discrimination complaint processing, as well as for seeking relief for proven victims of discrimination. OFCCP should only process complaints for which it is the sole source of relief. Such clear-cut role assignment can only aid OFCCP's return to its original purpose and will result in two agencies whose efforts are complementary rather than duplicative. The fact that contractors' actions will be judged by a consistent standard, that of Title VII, will also go far to alleviate businesses' current confusion and "double jeopardy."

C. ELIMINATION OF BURDENSOME AND COUNTERPRODUCTIVE REQUIREMENTS

Without cataloging all of the individual regulations which are burdensome, or counterproductive, CACI supports the following reform or relief:

1. A simplification of Affirmative Action Plan requirements; current AAP requirements include a work force analysis by "job groups," an eight-factor availability analysis; a utilization analyis, goal setting by job group and a number of other analyses. All of this strongly suggests a thinly disguised quota system. Affirmative Action Plans should, instead, be oriented toward progress in achieving improvements in minority and female representation in each of the EEO-1 categories. This can be done without the complex and arbitrary formulas which now impose a heavy and well-nigh incomprehensible bureaucratic burden on contractors.

2. An increase in the threshold for Affirmative Action Plan preparation; the current $50,000 and 50-employee threshold subjects many small contractors with little access to expertise and with limited impact on the labor force, to an onerous paperwork burden.

3. A less expansive definition of government contractor; under the current OFCCP definitions, practically any business can be a government contractor. Executive Order obligations are legally justifiable as part of a government procurement program; asserted coverage of businesses with only the most ephemeral relationship to a government contract should end. OFCCP's position that all of a contractor's facilities, subsidiaries, parent companies and their facilities, including those unrelated to any government contract, are subject to the Executive Order requirements should be revised.

4. An elimination of, or increase in, the threshold, for pre-award compliance reviews. Such reviews, consume an inordinate amount of OFCCP resources, which could be better utilized. If pre-award reviews are to be retained at all, then such reviews should be limited to very large contracts and contractors, where a genuinely significant impact on government procurement policies can justify the burden on the regulated industry.

5. The elimination of declarations of underutilization; contractors should not be forced, by virtue of doing business with the government, to publish statements increasing their exposure and liability under Title VII. Underutilization, in any event, should be a concept which applies only when the disparity between the number of minorities and females in the category and "availability" is statistically and practically significant. (See Firestone Tire and Rubber Co. v. Marshall, 507 F. Supp. 1330 (E.D. Tex. 1981), attached.)

Appendix I

Based on surveys of a sampling of CACI members, our experience shows that:

1. The EEOC and the OFCCP engage in "legalized extortion" by threatening to invoke their burdensome investigatory procedures to force a company to settle, regardless of the lack of merit in a given case. The following story was typical of the experience:

> "A fact-finding session, subsequent to the filing of a discrimination complaint, was conducted. The EEO Investigator indicated the case might be settled if we agreed to reinstate the former employee. After the proposal was rejected by the Company, the Investigator then proposed that we pay the equivalent of 3 months back pay to the complainant in order to avoid the possibility of an on-site investigation. This proposal was countered with a $200.00 offer by the Company which is still under consideration by the complainant. In our view, this so-called fact-finding discussion amounted to nothing more than an attempt to practice legalized extortion on the defendant Company regardless of the merits of the Company's position."

Another company relayed:

> "... the EEOC has taken a position of conciliate, or will investigate. For example, in one case where there was clearly no merit to the complaint, the [company] declined to enter into an "agreement." After threats made by the investigator did not result in our signing, he stated he'd mark our file that we were a recalcitrant employer..."

An additional "extortionist" tactic frequently utilized by the investigators is in the form of outrageous, initial demands to "scare" the company into settling the matter. One company told the CACI that the Agency had initially demanded a $1,000,000 settlement. The case was eventually settled for less than one-tenth of that amount. At another company, the OFCCP investigator demanded that all female hourly employees be promoted to supervisory positions based only on their seniority, regardless of ability.

2. The EEOC and the OFCCP subscribe to the belief that all companies are "guilty until proven innocent." And, the agencies are very reluctant to accept any "proof" of a company's innocence, even when their own investigations reveal no evidence of discrimination. The following story was typical.

"A three-day in-depth compliance review was conducted at a Company plant. In March, the Company received an official notification that the Company's Affirmative Action Plan was acceptable unless, within 45 days it was disapproved by the OFCCP.

No notification of disapproval was received from the OFCCP within the 45 days specified. But then, in June the same inspector advised the Company that its facility had been selected for a follow-up compliance review concerning the existence of affected classes of minorities and females at the facility. When the Company objected on the ground that the OFCCP had not disapproved of its Plan within the 45 days, he said that he had been "directed" by his superiors to go back and make another review and to find the affected classes of minorities and females.

The reply to the Company protest that it had already received a "clean bill of health," was:

> "Through an error of omission we did not act on the affected class matter during our earlier review. Although we could not find you in non-compliance, for not correcting an affected class in 19__, we felt we had a duty to learn whether or not an affected class existed and to assist you in mitigating any future damages which might arise should the affected class exist. Your assertion that you were in compliance with the regulations at the time, is quite correct."

The agency proceeded to make a finding of the existence of affected classes of minorities and females and demanded that the Company sign a Conciliation Agreement.

Another company had a similar experience:

> "The E.O.S. people from the OFCCP indicated when they left one of our facilities after an audit, that we had a good plan and that they were favorably impressed with the results at this facility. Three days later, a letter was received that the AAP was not acceptable and the Company had five days to submit an acceptable plan. Plant people were also informed that these days were 'calendar days' and not business days."

Several other companies stated that OFCCP audits and/or EEOC compliance investigations had been conducted at their facilities pursuant to individual charges and the auditing and investigations revealed that there had been no discrimination. Nevertheless, settlement of the individual charge was still pursued.

3. The OFCCP and the EEOC frequently conduct investigations pursuant to untimely charges or complaints.

4. It is not uncommon for the OFCCP to conduct a desk-audit or on-site review at facilities where no government contract work is performed.

5. Compliance with the OFCCP and EEOC regulations is extremely costly. One company estimated that compliance costs 1.8 million dollars per year.

6. Investigators frequently engage in questionable conduct, by asking employees leading questions and revealing information supplied to them by the company to the employees. One company learned that an EOS from the OFCCP had tried to "stir up" the employees by asking them "why do you think there is so much discrimination in this company?" Another company relayed that during one Equal Pay Act investigation, the EOS had divulged confidential salary information, by asking employees such questions as "did you know ________ was making more money than you ...?"

7. Finally, the companies uniformly agree that the EEOC and OFCCP often engage in "fishing expeditions" by requesting needless information unrelated to the investigation, rather than limiting themselves to the matters at issue.

APPENDIX II

EXCERPT FROM THE BRIEF OF DEFENDANT HARRIS TRUST AND SAVINGS BANK IN SUPPORT OF ITS EXCEPTIONS TO THE FINDINGS, CONCLUSIONS AND RECOMMENDED DECISION OF THE ADMINISTRATIVE LAW JUDGE IN UNITED STATES DEPARTMENT OF THE TREASURY v. HARRIS TRUST AND SAVINGS BANK

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IV. A. The Executive Order Does Not Authorize Back Pay Relief

. . .It is clear from the text of the Order that its purpose is not to redress past acts of discrimination by providing retrospective remedies but rather to require contractors to take prospective affirmative action. The sanctions provided in the Order are commensurate with this purely prospective purpose.

Thus, Section 209(a) of the Order, the only provision prescribing sanctions, sets forth a detailed list of sanctions that the Secretary may employ. These are: (1) publication of the names of violators; (2) referral of violations to the Department of Justice for enforcement; (3) referral of violations to the EEOC and Department of Justice to institute proceedings under Title VII; (4) recommends to the Department of Justice that criminal proceedings be instituted; (5) cancellation, termination or suspension of existing contracts; and (6) debarment. There is no mention of retrospective relief and it is uncontrovertible that nowhere in the Order is the Secretary of Labor authorized to seek retrospective remedies for alleged victims of discrimination. 7/

7/ As one commentator has stated:

> "The first three sanctions underscore the apparent inability of the Secretary to redress directly discrimination under the Order. While regulations provide for various proceedings before the OFCCP, the failure to comply with any orders issued by the Secretary may result merely in the cancellation of the employer's contract or in his debarment from further contracting, which are the last two sanctions listed. To be sure, the cancellation of a profitable contract or the debarment of a contractor heavily dependent upon federal business may be a substantial sanction. However, the imposition of such sanctions does not directly address the acts of discrimination which have occurred. Absent judicial action undertaken by other federal authorities, the OFCCP and the Secretary must be content with the Order's cancellation and debarment remedies."

Comment, "Executive Order No. 11246: Presidental Power to Regulate Employment Discrimination," 43 Mo.L.Rev. 451, 468-69 (1978). See also Brody, "Congress, the President and Federal Equal Employment Policymaking: A Problem in Separation of Powers," 60 Bos.U.L.Rev. 239 (1980).

The Order makes clear that redress for alleged past acts of discrimination must be obtained in judicial proceedings and that only debarment-related sanctions are available against a contractor for violation of the Order. United States v. East Texas Motor Freight System, 564 F.2d 179 (5th Cir. 1977).

B. There Is no Basis for Implying a Back Pay Sanction

Nor can authority to award back pay be implied into the Order. Nothing in Section 209(a) or any other section of the Order grants the Secretary discretion to add to the list of available sanctions. Absent such authority, the detailed exhaustive list of available sanctions included in the Order precludes the implication of additional remedies. Springer v. Philippine Islands, 277 U.S. 189 (1928); Rosing v. Secretary of HEW, 379 F.2d 189 (9th Cir. 1967); Transamerica Mortgage Advisors, Inc. (TAMA) v. Lewis, 444 U.S. 11 (1979). As explained by the Supreme Court in TAMA:

> "[I]t is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it. 'When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode.' [Citations omitted.]" (444 U.S. at 19-20)

This reasoning applies with full force to Executive Order 11246. Feliciano v. United States, 297 F.Supp. 1356, 1358-59 (D.P.R. 1969); United States v. Angcog, 190 F.Suppo. 696, 699 (D. Guam 1961).

Had the President intended to authorize the Government to seek redress for past discrimination under the Order, he would have done so expressly. Instead, the provisions in Section 209(a)(2) and (3) authorizing referral to the EEOC or the Department of Justice confirm that when the Secretary uncovers evidence of past discrimination he is to refer the case to the other federal agencies to secure relief for victims of that alleged discrimination in appropriate judicial proceedings under Title VII.

C. An Award of Back Pay Under the Executive Order Would Be Invalid As in Excess of the President's Statutory and Constitutional Authority and in Conflict with the Will of Congress

The foregoing discussion establishes that the President did not authorize the Secretary to seek back pay under the Order. Assuming, *arguendo*, that the President had sought to grant the Secretary such authority, the attempted authorization and any regulations issued pursuant thereto would nonetheless be invalid as in excess of the President's statutory and constitutional authority and as in conflict with the will of Congress. [8]

It is a fundamental tenet of our governmental system that the President may exercise only such powers as are rooted in an affirmative grant of authority from Congress or from the Constitution. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952); *Chrysler Corp. v. Borwn*, 441 U.S. 281 (1979); *AFL-CIO v. Kahn*, 618 F.2d 784 (D.C.Cir.), *cert. denied*, 443 U.S. 915 (1979). *Liberty Mutual Ins. Co. v. Friedman*, 639 F.2d 164, (4th Cir. 1981). In *Youngstown*, the Court, confronted with the President's seizure of the nation's steel mills pursuant to asserted authority under an Executive Order, stated:

> "[T]he President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself." (343 U.S. at 585)

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[8] Harris does not herein challenge the general validity of the Executive Order; its challenge is limited to the validity of the regulations providing for retrospective relief in an administrative proceeding.

Similarly, the Court, in elucidating the standards by which the validity of regulations promulgated by the Secretary of Labor under the Executive Order should be determined, stated that:

> "it is necessary to establish a nexus between the regulations and some delegation of the requisite legislative authority by Congress." (Chrysler Corp. v. Brown, supra at 304)

As shown below, there is no statutory or constitutional authority for the president to seek back pay awards under the Executive Order. To the contrary, in enacting and amending Title VII, Congress carefully considered but rejected granting the Executive Branch wide-ranging authority under the Executive Order to impose retrospective remedies for past discrimination. Thus, pursuant to the standards established in Youngstown 9/ and Chrysler, supra, attempted presidental authorization of the Secretary to impose back pay under the Order would be unauthorized and invalid as in conflict with the expressed will of Congress.

1. Congress Has Expressed Its Clear Will That Individual Relief for Past Acts of Discrimination Be Available Only in Federal Court Proceedings and Not Under the Executive Order

(a) Congress Refused to Grant the President the Authority to Seek Back Pay Which the ALJ Now Asserts

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9/ In his influential concurrence, Justice Jackson stated:

> "When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system." (343 U.S. at 637-38)

In enacting Title VII, Congress clearly intended that a remedy such as back pay be imposed only through federal court litigation with its attendant due process safeguards. Congress, therefore, established a statutory scheme for determining whether back pay liability exists and prescribed specific procedures for its enforcement in federal court. 42 U.S.C. §2000e-(5). 10/

Nowhere in Title VII, however, was the President authorized to use the pre-existing Executive Order to require back pay. To the contrary, Congress considered but declined to grant the President such authority.

As first proposed in the House of Representatives, Title VII arguably would have empowered the President to use his contracting authority to award back pay in administrative proceedings, regardless of the procedures for imposing back pay established by Congress. Thus, the original bill, H.R. 7152, later codified as Title VII, contained a section authorizing the President to "take such action as may be appropriate" to prevent government contractors from committing unlawful employment practices (§711(b) of the Civil Rights Act of 1964; H.R. Rep. No. 914, 88th Cong., 1st Sess. 1, 14 (1963)).

However, this expansive grant of authority ran into much opposition on its way to the floor of the Congress. The debate disclosed a grave concern that the phrase "take such action as may be appropriate" would expand the President's power well beyond his then existing contractual power to enforce equal employment through the sanctions of contract cancellation and debarment. H.R. Rep. No. 914, 88th Cong., 1st Sess. at

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10/ Relief is also available in court actions under 42 U.S.C. §1981. Unlike the Executive Order, however, §1981 is a specific statutory grant of authority, grounded upon the post civil war constitutional amendments. Moreover, again in contrast to Congress' intention with respect to the Order, Congress expressly found Title VII and §1981 not to be mutually exclusive and rejected an amendment to Title VII which would have deprived an individual of the right to sue under §1981. See H.R.Rep. No. 238, 1st Sess., 19 (1971); 118 Cong.Rec. 3371-73 (1972); Johnson v. Railway Express Agency, 421 U.S. 454 (1975).

87 (1963); Hearings Before Sucom. No. 5 of the House Comm. on the Judiciary, 88th Cong., 1st Sess. 1007-1014, 1114-1118; Hearings on S. 1731 and S. 1975 Before the Senate Comm. on the Judiciary 88th Cong., 1st Sess. 387 (1963).

In Committee, numerous objections were voiced that the section granted extremely broad powers to the President that would "make the executive branch of the Government the lawmaker, the judge, the jury and the executioner. . . ." Hearings on S. 1731 and S. 1750 Before the Senate Comm. on the Judiciary, 88th Cong., 1st Sess. 327, 331, 335, 342 (1963); Hearings Before the Subcomm. No. 5 of the House Comm. on the Judiciary, 88th Cong., 1st Sess. 1114-1118, 1476-1484 (1963). Indeed, specific concern was expressed by Senator Erwin that, pursuant to this section, the President would have unlimited sanctions at his disposal to enforce equal employment opportunity directives. Hearings on S. 1731 and S. 1750 Before the Senate Comm. on the Judiciary, 88th Cong., 1st Sess. at 387-389 (1963).

Section 711(b) subsequently was eliminated from the bill as adopted by the House (110 Cong.Rec. 2482 (1964)). During debate on the removal of the section, Congressman Dowdy declared:

> "[M]any of us have felt section 711 to be a highly dangerous section of the bill and accordingly much of our debate has been predicated on the fact that this language should be removed." (110 Cong. Rec. 2481 (1964))

Thus, Congress expressly declined to grant the President the broad authority under the Executive Order to fashion remedies for discrimination that the ALJ now claims exists. 11/

11/ An exchange between Congressman Quie and Celler (110 Cong.Rec. 2575) shows that Congress assumed that eliminating both Section 711(a) and (b) would not affect current substantive law (i.e., what constitutes discrimination) or diminish the powers already held by the President (110 Cong.Rec. 2573-75). However, the authority to seek retroactive remedies for discrimination was not included in the recognized presidential powers because no such remedies had been sough or recovered pursuant [cont'd]

(b) The Legislative History of the 1972 Amendments to Title VII Convincingly Shows That Congress Intended That Back Pay Would Not Be Awarded Under the Executive Order

The legislative debates resulting in the 1972 amendments to Title VII likewise demonstrate that Congress understood the phrase "affirmative action" as used in the Executive Order to refer only to the establishment of goals and timetables and other prospective action (see *e.g.*, 118 Cong.Rec. 1385 (1972)).

In the course of the 1972 debates over the transfer of OFCC 12/ functions to the EEOC, Senator Williams explained his understanding of those functions as follows:

> "The key to the Office of Federal Contract Compliance's approach is affirmative action. It is not a situation, although it could well be called one, of correcting persisting discrimination in its most well understood form. It involves an effort regardless of the past history of the employer to upgrade and improve its minority work force." (116 Cong.Rec. 1389 (1972))

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to the Executive Order at the time of passage of Title VII. U.S. Commission on Civil Rights. *The Federal Civil Rights Enforcement Effort - 1974*, 230 (1975), 49 Comp.Gen. 59, 70-71 (1969). Similarly, the interpretative memorandum of Senators Clark and Case which stated that Title VII would have no effect on the authority possess by the President under existing law (110 Cong.Rec. 7207 (1964)) shows that although Congress did not intend to detract from the Executive Order as it then existed, neither would it tolerate any extension of the President's power. As Secretary Wirtz in testimony before the subcommittee of the Senate Committee on Labor and Public Welfare, stated, "the [enforcement] power [under the Order] would lie in the cancellation of that contract . . . as ultimate sanctions. . . ." Now short of that would be whatever powers of persuasion there are." 88th Cong., 1st Sess. 415-16 (1963).

12/ The OFCC (Office of Federal Contract Compliance) was the predecessor to the current Office of Federal Contract Compliance Programs.

Senator Saxbe also carefully distinguished between affirmative action commitments under the Executive Order and judicial remedies for proven employment discrimination under Title VII. The Senator explained:

> "[T]he Executive Order Program should not be confused with the judicial remedies for proven discrimination which unfold on a limited and expensive case by case basis. Rather, affirmative action means that all government contractors must develop programs to insure that all share equally in jobs generated by the Federal Government's spending. Proof of overt discrimination is not required." (118 Cong.Rec. 1385 (1972); emphasis added)

To support his position against transfer of OFCC duties to EEOC, Senator Saxbe introduced into the Congressional Record the testimony of EEOC Chairman Brown given before the Senate Labor Subcommittee on October 4, 1971 (118 Cong.Rec. 1391-94 (1972)). In his testimony, Chairman Brown explained, regarding a transfer of OFCC fucntions to EEOC:

> "I can foresee serious problems arising as regards to investigations, remedies and open conflicts with provisions of Title VII. . . For example, while an individual may sue under Title VII to have an individual grievance redressed, under the provisions of the executive order the proper remedy is contract debarment, not individual redress. Also, the differences between the two remedies will probably necessitate different burdens of proof and differing emphasis on particular kinds of violations." (118 Cong.Rec. 1393 (1972); emphasis added)

Similarly, Representatiave Perkins, who supported the transfer of OFCC functions to the EEOC, recognized that the only remedy available under the Executive Order was contract debarment:

> ". . . the compliance program will be greatly strengthened if alternative remedies are made available. The only remedy currently available to the OFCC is contract debarment. . . ." (117 Cong.Rec. 31960-61 (1971); emphasis added) 13/

13/ Other portions of the legislative history of the 1972 amendments are consistent. For instance, Congressman Erlenborn at one point states that "OFCC can and does go beyond. . . [the powers granted by Title VII]." However, reading the entirety of the Congressman's statement reveals that he was referring only to the OFCC's power to require prospective affirmative action of government contractors and not to remedial powers of the President under the Order. Indeed, in that same statement, Congressman Erlenborn refers favorably to the testimony of EEOC Chairman Brown who testified that the only "remedy" available to OFCC was contract debarment (supra, p. 20). Similarly, Senator Saxbe's [cont'd]

In 1972, Congress also defeated Senator Williams' amendment to empower the EEOC to issue cease and desist orders. Instead, Congress amended Title VII to provide that the EEOC could enforce Title VII only through litigation in the federal courts. 14/ 118 Cong.Rec. 593 (1972); 118 Cong.Rec. 593 (1972); 118 Cong.Rec. 1381-84 (1972); 118 Cong.Rec. 3976 (1972); and 118 Cong.Rec. 3977 (1972). Three primary reasons motivated Congress' refusal to grant the EEOC cease and desist powers. First, federal court enforcement would provide the essential safeguards of due process and an impartial tribunal, thereby avoiding any biased findings by a zealous agency. Second, court enforcement would permit application of the judicial expertise developed over the year of resolving similar complex questions. Third, allowing retorspective remedies such as back pay to be sought only in judicial proceedings would avoid abrogation of due process rights occasioned by merger of judicial, prosecutorial and investigatory functions in a single administrative agency. 118 Cong.Rec. 696-97, 698-700, 701-04, 731-33, 927-28, 945, 1516-18, 1637-58, 2486-87, 3799-3800, 3808-09, 3965-81, 4075, 4077 (1972).

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statement that "the Executive Order program is independent of Title VII and not subject to some of its more restrictive provisions.", when read in context, shows that the Senator was referring only to the affirmative action concept which had been challenged as a violation of Section 703(j) of Title VII. The Senator explicitly recognized the distinction between remedies available under Title VII and the Executive Order (118 Cong. Rec. 1386, Col. 1). Finally, a memorandum introduced by Senator Percy refers cryptically to government-induced changes in certain company seniority systems. This reference was clearly to voluntary actions taken by companies in conciliation with OFCC and not through OFCC's direct administrative or judicial action. Moreover, Senator Percy, in his remarks, praised OFCC's affirmative action efforts and characterized OFCC's enforcement powers as "the awesome contract suspension, termination, and debarment powers" (118 Cong. Rec. 1597). Nowhere in Senator Percy's remarks is there an acknowledgment let alone approval of OFCC's power to require modification of seniority systems and to impose retroactive relief as remedies for past discrimination.

14/ Previously such authority had been vested in the Department of Justice.

Congress' grave concern in granting administrative hearing authority to the EEOC was forecefully stated by Senator Brock during the January, 1972 debates.

> "Mr. President, this Nation was founded on the philosophy of due process of law. A man accused might be given the right to go before a jury of his peers and plead his case--and be judged by his neighbors, right or wrong.
>
> Today we are debating legislation that threatens to undermine this very philosophy.
>
> The Equal Employment Opportunity Commission bill actually allows this regulatory Commission to put agents into the field who have the authority to go into a small business and say "Mr. I don't like what you are dong, it is discrimination, you are guilty, you are fined and don't bother to plead innocent because there is no appeal, my decision is final.'
>
> If we allow this legislation to pass with this authority, we will be creating a commission that will send bureaucrats, who have been elected by no one, out to serve as policemen, judge, jury, and prosecutor, all rolled into one.
>
> No judge or jury, just a bureaucrat with the power to judge and destroy.
>
> This uncontrollable regulatory authority in the EEOC bill is a violation of every tenet of America. There is simply no excuse for Congress to delegate this kind of raw power to this agency.
>
> The Federal Government does not have the right to say to Americans, under any circumtances, that 'you are guilty until proven innocent--and you have no appeal.'
>
> Mr. President, I urge my colleagues to support the Dominick amendment which removes this regulatory power from the bureaucracy and puts it where it should be, with the courts." (118 Cong.Rec. 945 (1972))

These expressions of congressional concern apply with even greater force to imposing back pay award in OFCCP administrative proceedings.

Thus, the legislative history of Title VII and its 1972 amendments manifest the will of Congress that back pay not be available under the Executive Order. In Youngstown, the Supreme Court, in striking down the President's seizure of the nation's steel mills, relied upon Congress' earlier refusal to grant the President the power he was exercising 343

U.S. at 586. Youngstown thus established the principle that, where Congress in comprehensive legislation has declined to grant the Executive the authority at issue, the President exceeds the constitutional limits of his power if he, nonetheless, attempts to exercise such power through an Executive Order. That principle, as demonstrated above, is directly applicable herein.

2. No Statutory or Constitutional Authority Exists for Requiring Back Pay Under the Order

In the face of this overwhelming expression of Congress' intention not to grant the President authority to impose retrospective relief under the Order, the purported sources of statutory authority for the Order do not provide such authorization.

As stated above, in order for action under the Order to be valid, it must be rooted in an affirmative grant of authority from Congress or the Consistution. 15/ Although "[t]he origins of the congressional authority for Executive Order 11246 are somewhat obscure and have been roundly debated by commentators and courts," Chrysler Corp. v. Brown, supra; the most widely accepted sources of authority is the Federal Procurement Act, 40 U.S.C. §471 et seq. 16/ United States v. Lee Way Motor Freight, Inc., 20 FEP Cas. 1345 (10th Cir. 1979); United States v. East Texas Motor Freight System, supra; Contractor's Ass'n., supra; Farmer v. Philadelphia Electric Co., 329 F.2d 3 (3rd Cir. 1964).

15/ The Constitution cannot be deemed to be authority for the Executive Order. It is well settled that the President has no inherent constituional power to legislate in the area of employment discrimination. Youngstown, supra, Liberty Mutual Ins. Co. v. Friedman, supra, 639 F.2d at 172, fn. 13; Contractors Ass'n of Eastern Pa. v. Secretary of Labor, 442 F.2d 159, 171 (3rd Cir.) cert. denied, 404 U.S. 854 (1971); Bethel v. Jendoco Construction Corp., 16 FEP Cas. 835 (W.D. Pa. 1976); Traylor v. Safeway Stores, Inc., 402 F. Supp. 871 (N.D. Cal. 1975)

16/ The only case finding any additional statutory support for the Executive Order was United States v. New Orleans Public Service, Inc. (NOPSI), 553 F.2d 459 (5th Cir. 1977), vacated on other grounds, 436 U.S. 942 (1978), affirmed on remand, 25 FEP Cas. 250 (5th Cir. 1981). See also its companion case United States v. Mississippi Power & Light Co., 553 F.2d 480 [cont'd]

Assuming, arguendo, that the Procurement Act provides general statutory authority, 17/ a specific application of the Order, to be valid, must be reasonably related to the purposes of the Act. Chrysler Corp. v. Brown, supra; Liberty Mutual v. Friedman, supra; AFL-CIO v. Kahn, supra.

Thus, in Liberty Mutual, the Court in striking down as outside the scope of statutory authority, an interpretation of OFCCP's "subcontractor" regulation purporting to extend Executive Order Coverage over an underwriter of workmen's compensation insurance stated: (639 F.2d at 170)

> "any application of the Order must be reasonably releated to the Procurement Act's purpose of ensuring efficiency and economy in government procurement . . . in order to lie within the statutory grant. . . [there must be] a reasonably close nexus between the efficiency and economy criteria of the Procurement Act and any exactions imposed upon federal contracts by Executive Order[s]. . ."

Thus, in Contractor's Ass'n, supra, the Court found that the Procurement Act authorized application of the Order's nondiscrimination requirements to federally assisted construction contracts because arbitrary exclusion of minorities from the labor pool ultimately increased the Government's cost

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(5th Cir. 1977), vacated, 436 U.S. 942 (1978), affirmed on remand, 25 FEP Cas. 250 (5th Cir. 1981). There, the appeals court found Title VII and the 1972 amendments thereto to be additional sources of delegated power for the Executive Order. The NOPSI court erred in that conclusion. The predecessor to Executive Order 11246 was issued prior to the passage of Title VII and that Act and its 1972 amendments merely reflect congressional intent that the President's Executive Order program not be abrogated by that legislation. As above demonstrated (at pp. 19-23), the 1972 amendments to Title VII cannot be viewed as implied congressional authority for awards of retrospective relief. In fact, the passage of the Congressional Record cited above underscore Congress' recognition of the limited nature of the President's power under the Order. Moreoever, in 1972, the Secretary was not seeking authority for such relief under the Executive Order and Congress only authorized continued funding of the program. The Supreme Court has recently criticized the interpretation of appropriations measures as implied approvals of substantive administrative action. TVA v. Hill, 437 U.S. 153 (1978). Title VII contains no delegation of substantive lawmaking authority to the President. Liberty Mutual, supra, 639 F.2d at 172; see also Chrysler Corp., supra, 441 U.S. at 305, n. 35.

17/ The obvious weakness of this contention has been noted by several commentators. Comment, "Executive Order No. 11246: Presidential Power to [cont'd] of doing business. The court based its decision on factual findings that the underrepresentation of minorities in six construction industry trades results from exclusionary practices by trade unions rather than any lack of qualified minority applicants in the labor pool. (442 F.2d at 164).

Given that the purported rationale for the President's authority to order affirmative action under the Procurement Act derives from Congress' concern with the cost of Government contracts and the speed at which they are performed, no nexus between that objective and the Government's effort to obtain back pay under the Executive Order can be established. Indeed, insofar as retrospective remedies impose additional costs on government contractors, they may ultimately increase the cost to the Government of securing services and supplies.

Recognizing this, the Third Circuit in Contractor's Ass'n, supra, specifically declined to extend the cost reducing rationale to retrospective remedies and took special care to note that government contractors are not being required to remedy acts of past discrimination. Instead, the court stated:

> "[Contractors] are merely being invited to bid on a contract with terms imposed by the source of the funds. The affirmative action convenant is no different in kind than other covenants specified in the invitation to bid. The Plan does not impose a punishment for past misconduct. It exacts a convenant for present performance." (442 F.2d at 176; emphasis added)

Regular Employment Discrimination," 43 Mo.L.Rev. 451, 468-69 (1978); Morgan, "Achieving National Goals Through Federal Contracts: Giving Form to an Unconstrained Administrative Process," 1974 Wis.L.Rev. 301, 310-12; Comment, "The Philadelphia Plan: A Study in the Dynamics of Executive Power," 39 U.Ch.L.Rev. 723 (1972). The procurement statutes were enacted to promote more efficient administration of the Government's procurement activities and there is no evidence that Congress considered granting the President such authority as is now claimed. U.S.Code Cong.Serv. 1475-76 (1949). See Morgan at 310-12; Comment, 39 U.Chi.L.Rev. at 729-30; Brody, fn. 7 at 239, 293 and n. 235. The extent of statutory power to enact the Order has never been subjected to strict judicial scrutiny because the statutory authority for the Order has never been squarely contested. Indeed, the Supreme Court has recently expressed, in Chrysler Corp. v. Brown, supra, its reservations as to the Federal Procurement Statutes being the basis for the Executive Order (441 U.S. at 304-05).

The absence of any demonstrable nexus between imposition of retrospective remedies under the Order and increased economy or efficiency compels the conclusion that the Procurement Act does not authorize imposition of retrospective relief under the Order, Liberty Mutual, supra; AFL-CIO v. Kahn, supra, especially where Congress has subsequently manifested its specific intention not to grant the President such authority. Therefore, the requirements of retrospective remedies for past discrimination cannot be considered to be within the scope of presidential action authorized by the procurement statutes.

EXCERPTS FROM THE
BRIEF AMICUS CURIAE OF THE
EQUAL EMPLOYMENT ADVISORY COUNCIL
IN UNITED STATES DEPARTMENT OF THE TREASURY v. HARRIS TRUST AND SAVINGS BANK

ARGUMENT

I. THE BACK PAY RECOMMENDATION OF THE ALJ IMPLEMENTS A REGULATORY POLICY WHICH LACKS STATUTORY AUTHORITY, IS NOT AUTHORIZED BY EXECUTIVE ORDER 11246 AND WAS NEVER PROPERLY PROMULGATED. AFFIRMANCE BY THE SECRETARY WOULD BE IMPROPER AND AT ODDS WITH THE POLICIES OF CONGRESS AND THIS ADMINISTRATION

The OFCCP back pay regulations at issue were not adopted until January 14, 1977, over a decade the issuance of Executive Order 11246. As shown below, the regulations are inconsistent with the intent of Congress and the language of the Order itself.4/ The lack of authority for the program, plus the

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4. Moreover, the history of this "policy" shows it was based on a concept of expansive governmental authority that is antithetical to the regulatory approach that has been adopted by the Reagan Administration and which is now being applied throughout the federal government. The regulation at issue would constitute a "major rule" as defined in Executive Order 12291, signed by President Reagan on February 17, 1981. Under President Reagan's Order, each major rule proposed is to be accompanied by a Regulatory Impact Analysis setting forth a description of the potential costs and benefits of the proposed rule, a determination of its potential net benefits, and a description of alternative approaches that might substantially achieve the regulatory goals at a lower cost. Moreover, the agency proposing the rule is required to:

> Make a determination that the regulation is clearly within the authority delegated by law and consistent with congressional intent, and include in the Federal Register at the time of promulgation a memorandum of law supporting that determination.

Executive Order 12291, Section 4(a). 46 Fed. Reg. 13192, 13195 (Feb. 19, 1981). No such determination or impact analysis accompanied the promulgation of the OFCCP regulations. In fact, the regulations were adopted without full regard for the administrative requirements then in effect. See below, inconsistent and improper means of its enforcement, have generated a continuing controversy that has disrupted the contract compliance program and deflected it from its intended purpose of furthering meaningful prospective affirmative action.[5] The result has been a dissipation of agency resources and and unwarranted duplication of the remedial scheme entrusted by Contress exclusively to the Equal Employment Opportunity Commission.

Although the Solicitor argued below that back pay is a long-standing policy, to our knowledge, this is one of the first instances in which the Secretary of Labor has been asked to approve a back pay award under Executive Order 11246 following a recommendation of such a remedy by an Administrative Law Judge. The order of the Secretary will be subject to judicial review, and affirmance of the ALJ would place the Secretary in the position of formally defending in court an approach developed in prior administrations and lacking in able legal or practical validity.

Such an order by the Secretary would give a formal stamp of approval to a regulatory policy which the agency has been threatening to invoke for several years. In that time, the agency has never subjected the back pay policy to proper public scrutiny. Thus, before any order is issued in this case, the EEAC urges most strongly that the Secretary conduct a carefulreview of OFCCP's asserted right to seek back pay as a remedy in enforcement actions. EEAC believes that upon such review, the Secretary will find that the back pay remedy is neither "clearly within the authority

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5. The lack of any formal determination by OFCCP that the back pay regulation is clearly within the authority granted by Congress is compounded by the fact that the statutory basis for Executive Order 11246 has not been clearly determined. As the United States Supreme Court noted in 1979, in its decision in Chrysler Corp. v. Brown, 441 U.S.281, 304, 99 S. Ct. 1705, 1719:

> The origins of the congressional authority for Executive Order 11246 are somewhat obscure and have been roundly debated by commentators and courts.

Executive Order 11246 itself states simply that it is promulgated "[u]nder and by virtue of the authority vested in [the President] of the United States by the Constitution and statutes of the United States."

delegated by law" nor "consistent with congressional intent."6/ Moreover, inasmuch as the back pay policy was never properly noticed for public comment (see below, pp. 24-26), and is not reflective of any consistent past agency practice (see below, pp.24-26), we see no impediment to the Secretary's holding in this case that such a remedy is inappropriate.7/

A. The Back Pay Policy Asserted by the OFCCP Lacks Any Nexus to Any Legislative Purpose or Authorization

The Supreme Court recently set forth a specific test for determining the validity of OFCCP regulations issued under Executive Order 11246:

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6. Executive Order 12291, Section 4(a), signed by President Reagan February 17, 1981. In urging the Secretary to give careful scrutiny to the back pay policy, the Amicus notes that the OFCCP regulations generally have been designated for reassessment under Executive Order 12291 by the President's Task Force on Regulatory Relief. See Memorandum from Vice President George Bush to Heads or Executive Departments and Agencies, March 25, 1981.

7. It is clear that back pay is not authorized by the specific language in Executive Order 11246 nor by the inapposite legislative history relied upon by the Solicitor before the Administrative Law Judge. We agree with the arguments in Harris' brief on these points and do not reiterate them here. It should be emphasized, however, that the Supreme Court recently has indicated that monetary liability should not be inferred into a statutory scheme where the statutory language does not provide for such relief. In Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 19-20 (1979), the Court stated:

> If monetary liability to a private plaintiff is to be found, [one] must read it into the Act. Yet it is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it. "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode." [Citations omitted.] Congress expressly provided both judicial and administrative means for enforcing compliance with [the Act]. . . . In view of these express provisions for enforcing the duties imposed by [the Act], it is highly improbable that "Congress absentmindedly forgot to mention an intended private action." [Citation omitted]

This reasoning applies with full force to Executive Order 11246. Consequently, the absence in Section 209(a) or any other section of the Order of any authority of the Secretary to add to the list of available sanctions and the detailed exhaustive list of available sanctions included in the Order, precludes the implication of additional remedies. Because the Order itself does not mention back pay, the cases relied on below by the Solicitor holding that the Order has the force and effect of law are irrelevant to the question now before the Secretary.

> (I)n order for such regulations to have the "force and effect of law," it is necessary to establish a nexus between the regulations and some delegation of the requisite legislative authority by Congress.

Chrysler Corp. v. Brown, 441 U.S. 281, 304, 99 S. Ct. 1705, 1719 (1979). Thus, the Secretary must determine:

> Whether under any arguable statutory grants of authority, the OFCCP. . . regulations relied on by the Government are reasonably within the contemplation of that grant of authority.

441 U.S. at 306. In this case, the Administrative Law Judge ignored the Supreme Court's "nexus test," and wrongly concluded that the OFCCP regulation on the back pay remedy has the force and effect of law.

When OFCCP in 1977 promulgated the regulations which make reference to the back pay remedy, the agency made no reference at all to the statutory authority on which it relied. Despite suggestions that such authority may derive from some combination of the Civil Rights Act of 1964, the 1972 amendments to that Act, and the Federal Property and Administration Services Act of 1949, neither these statutes nor any others contemplated the authorization of a back pay remedy in OFCCP enforcement actions. Thus, General Conclusion No. 4 of the ALJ cannot be sustained.

1. The OFCCP's Asserted Right to Collect Back Pay Through Administrative Enforcement Actions is Contrary to the Congressional Intent Expressed in the Civil Rights Act of 1964.

At earlier stages in this case, the Government has argued that the Civil Rights Act of 1964 did nothing to affect the authority of the President to enforce nondiscrimination in employment by government contractors. But the assertion that nothing was taken away in 1964 or in 1972 only begs the question of whether Congress ever granted such authority to the Department in the first place. There is simply no language in the statute or in the legislative history to support the grant of such authority.

What in fact is revealed by the 1964 Title VII legislative history is that Congress specifically rejected a section of the proposed bill which would have given the President unfettered discretion in preventing employment discrimination in the performance of government contracts.8/ Furthermore, Congress rejected the concept that remedies such as back pay would be available in administrative proceedings, except as part of a mutually acceptable settlement agreement. Congress specified that a remedy such as back pay would be ordered only after discrimination had been proven under Title VII in federal court. Congress specifically rejected the concept of a single administrative agency which would act as investigator, prosecutor and judge in the area of equal employment opportunity.

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8. Section 711(b) of H.R. 7152, the bill which ultimately was to become the Civil Rights Act of 1964, provided:

> The President is authorized to take such action as may be appropriate to prevent the committing or continuing of an unlawful employment practice by a person in connection with the performance of a contract with an agency or instrumentality of the United States.

The House Judiciary Committee Report which accompanied H.R. 7152 offered no discussion or analysis of the purpose of this section. The minority portion of the report, however, did note that this unlimited authority would broaden the enforcement provisions and would "encourage unlimited issuance of Executive Orders." H. R. Rep. No. 914, 88th Cong., 1st Sess. (1962). See, 1964 Legislative History at 2002, 2014, and 2087. On the House floor Congressman Celler offered an amendment striking Section 711(b) from the bill. The amendment was approved by a voice vote

2. When Congress Amended Title VII in 1972, It Recognized that Retrospective Relief Would Be Available Only Through Title VII, and Restricted the Back Pay Authority of EEOC and the Courts so that It Would Not Be Unlimited or Coercive

The legislative history of the 1972 Amendments to Title VII cannot be read as support for a back pay policy which had not the been established .9/ In the first place, the

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9. In 1972, Congress again expressed its concern about giving too much power to the EEO-enforcement bureaucracy. In adopting the 1972 amendments to the Civil Rights Act of 1964, Congress rejected a proposal by Senator Williams which would have given the Equal Employment Opportunity Commission the power to issue self-enforcing cease and desist orders. Also rejected was an amendment which would have transferred the functions of OFCCP to the EEOC. The reasons for opposition to giving hearing authority to the EEOC were expressed by Senator Brock and voice Congressional principles diametrically opposed to the broad authority sought by the Government here:

> Mr. President, this Nation was founded on the philosophy of due process of law. A man accused must be given the right to go before a jury of his peers and plead his case--and be judged by his neighbors, right or wrong.
>
> The Equal Employment Opportunity Commission bill actually allows this regulatory Commission to put agents into the field who have the authority to go into a small business and say "Mr. I don't like what you are doing, it is discrimination, you are guilty, you are fined and don't bother to plead innocent because there is no appeal, my decision is final."
>
> If we allow this legislation to pass with this authority, we will be creating a commission that will send bureaucrats, who have been elected by no one, out to serve as policeman, judge, jury and prosecutor, all rolled into one.
>
> No judge or jury, just a bureaucrat with the power to judge and destroy.
>
> This uncontrollable regulatory authority in the EEOC bill is a violation of every tenet of America. There is simply no excuse for Congress to delegate this kind of raw power to this agency.
>
> The Federal Government does not have the right to say to Americans, under any circumstances, that "you are guilty until proven innocent--and you have no appeal."
>
> Mr. President, I urge my colleagues to support the Dominick amendment which removes this regulatory power from the bureaucracy and puts it where it should be, with the courts. (emphasis added).

1972 Legislative History at 841.

only published regulation purporting to authorize orders of back pay in OFCCP enforcement actions was not adopted until 1977, several years after Congressional action. Although the Government has argued that it entered into back pay settlement agreements before 1972, it cannot be assumed that Congress in 1972 was aware of or approved these informal aspects of the program, which were not part of the regulations officially promulgated under the Executive Order and which were not mentioned in the 1972 legislative history or debates. In fact, it must be assumed that Congress knew nothing about these back pay settlement agreements.

In its arguments to the Administrative Law Judge, the Government estimated that there were approximately 15 such settlements prior to the passage of the 1972 Amendments to Title VII. A significant portion of these settlements was for less than $1,000 each and some were for less than $100. Moreover, these settlements were not entered into by any single agency, but rather by an assortment of the various compliance agencies then in existence. And in fact, there was significant disagreement among the compliance agencies about whether OFCCP's back pay approach was a valid part of the Executive Order program. This is demonstrated by a 1974 letter from the General Counsel for the Secretary of Defense on behalf of the Department of Defense, one of the largest government procurement agencies, to the Solicitor of Labor. In that letter, the General Counsel states that an announcement on January 31, 1974, by the OFCCP Director, that compliance agencies must negotiate meaningful back pay settlements "appears to depart from past policy under the Executive Order." See, Letter of April 29, 1974, from Martin R. Hoffman, attached as Appendix A pp. 2-3)

The General Counsel's letter went on to explain that back pay is not specifically mentioned in the Executive Order and that the Department of Defense did not believe that a back pay remedy could be implied because "the Order is designed to be forward looking rather than to provide for back-pay compensation. . . ." The Deputy Chief of the Defense Supply Agency compliance branch then informed the Regional Commanders that the OFCCP Director's instruction that "'compliance agencies must negotiate meaningful back-pay settlements'. . . appears to depart from past policy on this subject. . ." See, Appendix A, page 4. Based upon Mr. Hoffman's letter, the Deputy Chief instructed that *"No action is to be taken to include back-pay as an element of remedial affirmative action in affected class situations*." (Emphasis supplied). *Id*.

Congress in 1972 expressed a similar limited view about the remedial authority of OFCCP. While not a single legislator referred to back pay settlements or an implicit back pay remedy under the Executive Order, numerous legislators made statements indicating that they recognized a distinction between Title VII, which provided retrospective relief for victims of proven discrimination, and the Executive Order program, which had a prospective focus and remedies. Statements by Senator Saxbe, for example, reflect an understanding of the carefully drawn distinction between judicial remedies imposed after employment discrimination has been proven in a Title VII case and the affirmative action commitments undertaken by government contractors:

> The Executive order program should not be confused with the judicial remedies for proven discrimination which unfold on a limited and expensive case by case basis. Rather, affirmative action means that all government contractors must develop programs to insure that all share equally in the jobs generated by the Federal Government's spending. Proof of overt discrimination is not required.

1972 Legislative History at 915. Moreover, this same distinction had been explained by the Chairman of the Equal Employment Opportunity Commission when he testified before Congress in 1971, and by the Secretary of Labor when he testified in 1963.[10]

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[10] Prior to the 1972 Amendments, Chairman William A. Brown of the EEOC testified that "while an individual may sue under Title VII to have an individual grievance redressed, under the provisions of the Executive Order the proper remedy is contract debarment, not individual redress." See 1972 Legislative History at 932 (October 4, 1971). His testimony was cited by Senator Saxbe in the 1972 debates. 118 Cong. Rec. 1391-94 (1972). In 1963, Secretary of Labor Willard Wirtz, testifying before a House Committee about the provisions of Executive Order 10926, the predecessor to Executive Order 11246, stated that "the enforcement provisions in the Executive Order are limited to the cancellation of the contract,. . . ." *See*, House Hearings on H.R. 3861, Equal Pay Act, March 15, 1963.

Thus, not only are there no legislative statements supporting the collection of back pay in enforcement actions, there is no indication that the legislators were even aware of the settlement agreements now cited by the government. Traditionally, Congressional silence is entitled to little weight in interpreting legislative intent.11/ It certainly cannot be interpreted here as being tacit Congressional approval of an enforcement technique which, in 1972, had not been formally adopted and which had been applied only infrequently by individual compliance agencies. The fact remains that there is an inherent difference between such pre-1972 settlements containing modest back pay provisions and the back pay order which the government seeks to impose in this case. As the Supreme Court recognized in United Steelworkers v. Weber, 443 U.S. 193 (1979), the fact that a contractor voluntarily agrees to implement a remedy does not mean that a government agency has a inherent authority to compel the same relief.

A contractor charged with noncompliance with the nondiscrimination clause and faced with lengthy proceedings leading to possible loss of its government contracts could reasonably view a settlement agreement including back pay to certain individuals as preferable to the costs of fully contesting the matter. The voluntary settlement action of individual contractors can in no way be transformed into a Congressional authorization. Thus, such settlements (and particularly the modest settlements of 1969 through 1972) serve neither as authority for nor a Congressional acknowledgement of a right by OFCCP to order back pay in an enforcement action.

3. OFCCP's Coercive Use of Enormous Potential Back Pay Liability Is Contrary to Specific Congressional Intent and Cannot Be Considered a Source of Authority

In the years since 1972, there have been many more settlement agreements, often including large amounts of back pay. A large and significant number of these back pay settlements, however, were reached during the years when the Government was threatening contractors with its pass-over policy. Under this policy, a government

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11. United States v. Price, 361 U.S. 304, 310-311 (1960) ("nonaction by Congress affords the most dubious foundation for drawing positive inferences"); See also, 2A C. Sands, Sutherland Statutory Construction (4th Ed. 1973), §§ 48.01, 48.02

contractor which had received a show cause letter alleging noncompliance was declared to be "nonresponsible" and would be passed over by all procurement agencies in the awarding of contracts.[12] Typically, this pass-over process was begun without the contractor being afforded a hearing. This procedure of blacklisting contractors constituted de facto debarment without a hearing and without any procedural safeguards. Any contractor that chose to contest the noncompliance allegations through administrative proceedings did so at the expense of continuing its ineligibility for government contracts.

Attempts by contractors to resort to the courts to challenge directly the government's back pay policy were met with the argument that the administrative remedies must first be exhausted before judicial action was possible.[13] Thus, a contractor to seeking to avoid pass-over and to maintain eligibility for government contracts in the face of an allegation of noncompliance had two choices. One was to accede to the Government's demands for a settlement agreement including back pay. The other was to assert its doubts about the back pay remedy and seek a federal district court injunction to force the OFCCP to have a hearing before it withheld contracts.[14] The pass-over policy was followed even though, in 1976, the Director of the

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[12] Revised Order No. 4, 41 41 C.F.R. § 60-2.2(b).

[13] *Kerr Glass Mfg. Co. v. Usery*, (D. C. Cir. No. 75-2225, Jan. 27, 1977); *St. Regis Paper Company v. Marshall*,591 F.2d 612 (10th Cir.), *cert. denied*, 444 U.S. 828 (1979).

[14] See e.g., *Pan American World Airways v. Marshall*, 439 F. Supp. 487, 495 (S.D. N.Y.) (government's policy characterized as "economic coercion"); *Sundstrand Corp. v. Marshall*, 17 FEP Cases 432 (N.D. Ill. 1978), 20 FEP Cases 352 (N.D. Ill 1978); and *Illinois Tool Works Inc., v. Marshall*, 17 FEP Cases 520 (N.D. Ill. 1978); 20 FEP Cases 357 (N.D. Ill. 1978); *affirmed in part*, 601 F.2d 943 (7th Cir. 1979). Injunctions or restraining orders were obtained by at least 15 contractors. See Memorandum of Richard B. Sobol to Weldon J. Rougeau, Director, OFCCP, dated July 26, 1978, Re: Recommended Revisions in the Procedures for the Enforcement of Executive Order 11246, at pp. 8-9.

Office of Federal Contract Compliance Programs had acknowledged that such practices could amount to "a form of blackmail over contractors."15/

Plainly, the settlement agreements reached under the threat of pass-over add no legitimacy to the Government's claim in the instant case that it is entitled to a back pay order in an enforcement action. The large volume of injunctions necessary to prevent the pass-over policy only demonstrates the extensive scale of the coercive tactics that were utilized illegally to pursue the OFCCP's back pay policy. But far from providing authorization for back pay relief, the fact that the government succeeded in forcing contractors to agree to pay back pay during this period merely stands as a tarnished monument to the attempts of the previous Administration to enforce their policies by disregarding the principles of fundamental fairness and due process.

In light of such abuses of the back pay remedy in the name of nondiscrimination and affirmative action, it is instructive that the legislative history of the 1972 Amendments to Title VII shows that Congress expressed fears about the coercive abuses that could result from EEOC back pay authority. This concern hardly leaves the door open for OFCCP to argue that the same Congress authorized the broad unfettered remedy to which that agency now lays claim.

The 1972 Title VII Amendments assured that back pay would be awarded only after the allegations of discrimination had been

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15. Statement of Lawrence Z. Lorber, quoted in 110 Daily Labor Report (BNA), A-13 (June 7, 1976). In the July 26, 1978, Report to the Director of OFCCP, on Recommended Revisions in the Procedures for the Enforcement of Executive Order 11246, Richard B. Sobol stated (p. 6):

> This procedure is intended to increase the pressure on a contractor to comply and comply quickly with the corrective recommendations of a compliance officer. . . . Nevertheless, there is serious question whether the denial of contracts without a hearing is in violation of Section 208(b) of the Executive Order. . . .

Sobol's report recommended that the pass-over policy be discontinued, which it subsequently was, but not before a significant number of contractors were coerced into signing settlement agreements.

proven in federal court. And even then, the employers' liability for back pay is limited to the two years prior to the filing of the lawsuit.16/

The very reason for this limitation was a fear that claims for back pay for an extended or unlimited period of time could coerce Title VII defendants into seeking settlements rather than contesting claims where there was even the slightest possibility that the plaintiff might prevail. The two-year limitation was part of an amendment offered by Representative Erlenborn, who explained:

> Testimony before the House General Labor Subcommittee by EEOC Chairman Brown established that the position of EEOC is that remedies--including back pay--for discriminatory acts may reach back to the effective date of the act, July 2, 1965. It is not clear that the courts have so held. However, *to preclude the threat of enormous back pay liability which could be utilized to coerce employers and labor organizations into surrendering their fundamental rights to a fair hearing*, my bill. . . limits liability in pattern and practice suits to a period of two years prior to the filing of a complaint with said court. (Emphasis supplied).17/

The coercion which Mr. Erlenborn sought to prevent is now being applied to employers through the government contract compliance program. Through the instant case, the OFCCP is seeking to warn all government contractors that those who choose to contest allegations of discrimination rather than accede to a settlement agreement dictated by the agency will face the prospect of back pay liability unlimited by time or substantive standards developed under Title VII. Such coercive practices by the agency are not condoned by any statutory authority, and are specifically contravened by the Congressional action in 1972 to place strict limits on back pay liability to assure that the potential remedy would not be abused.18/

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16. See Section 706(g) of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(g).

17. 1972 Legislative History at 249.

18. For a detailed examination of the contrast between OFCCP's back pay standards and those of Title VII see Slominski and Willacy, *Back Pay and Extra-Judicial Proceedings: Is the Office of Federal Contract Compliance Exceeding its Authority?*, 41 Ohio St. L. J. 401, 410-15, 418-21 (1980). The authors demonstrate that back pay is not permissible under the Order, and that the agency fails to follow the procedural, evidentiary and substantive safeguards authorized under Title VII to determine if and to whom such relief might be available.

In light of the foregoing arguments, it is clear that Congress never endorsed a back pay policy for the OFCCP. Such a remedy would be contrary to the prospective nature of the program as recognized by Congress. Moreover, the unrestricted authority claimed by the OFCCP is of the same nature as that which Congress denied to the EEOC--the only agency authorized to obtain back pay for equal employment violations.

4. OFCCP's Asserted Right to Order Back Pay Is Not Authorized by the Federal Procurement Statute

Congress delegated general procurement power to the Executive branch in the Federal Property and Administrative Services Act. The purpose of this Act is to provide "an economical and efficient" system for the procurement of property and services by the government. 40 U.S.C. § 471. The Act authorizes Executive Orders "necessary to effectuate [its] provisions," 40 U.S.C. § 486(a), but it does not mention employment discrimination. In examining the relation between the federal procurement statute and the nondiscrimination requirements of Executive Order 11246, it often is argued that the nondiscrimination requirements were justified because of the strong federal interest in ensuring that the cost of federally-assisted construction projects is not adversely affected by an artificial restriction of the labor pool caused by discriminatory employment practices. See, Contractors Association v. Secretary of Labor, 442 F.2d 159 (3d Cir. 1971).

The conclusion in Contractors Association that the federal procurement statute provides a general source of authority for Executive Order 11246 has been the subject of significant criticism.[19] What is noteworthy about the Contractors Association decision, however, is that the court clearly recognized the purely prospective nature of the compliance program. As the court stated:

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[19] See Morgan, Achieving National Goals Through Federal Contracts: Giving Form to an Unconstrained Administrative Process, 1974 Wis. L. Rev. 301, 312, in which Professor Morgan states that it is likely that the Executive Order was issued by the President solely to achieve equality of employment opportunity rather than to increase the available labor force or to reduce the government's procurement costs. He notes that the only intention of Congress in granting procurement powers to the President was to minimize internal bureaucratic red tape in the procurement process. See also, Note, The Philadelphia Plan: A Study in the Dynamics of Executive Power, 39 U. Chi. L. Rev. 723, 732 (1972), which criticizes the Third Circuit decision on the ground that it does not deal squarely with the central issues concerning separation of powers. See also,

> [Contractors] are merely being invited to bid on a contract with terms imposed by the source of the funds. The affirmative action covenant is no different in kind than other covenants specified in the invitation to bid.
>
> *The Plan does not impose a punishment for past midconduct . It exacts a covenant for present performance.* (Emphasis added).[20]

Moreover, the Third Circuit did not end its analysis after it found a general source of authority for the Executive Order. It went on to consider whether there also was a source of authority for the specific aspect of the Executive Order program which was being challenged in that case. This type of analysis is consistent with the "nexus test" prescribed by the Supreme Court in *Chrysler* and, as the Court's characterization in *Chrysler* suggests, *Contractors Association* should be read as holding that the procurement statute grants authority for "some aspects of Executive Order 11246." 441 U.S. at 305 n.34. This approach most recently was applied in

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Footnote No. 19 (Cont'd.)
Note, *Doing Good the Wrong Way: The Case for Delimiting Presidential Power Under Executive Order No. 11,246*, 33 Vand. L. Rev. 921, 931 (1980), which notes that the *Order* almost insures an increase rather than a decrease in procurement costs for the federal government, and which is cited by the Fourth Circuit in *Liberty Mutual Ins. Co. v. Friedman*, 639 F.2d 164, 169 (4th Cir. 1981).

[20] 442 F.2d at 176. This language and the court's subsequent analysis which seeks a specific source of authority for that aspect of the Executive Order program being challenged indicates that the later district court decision in *United States v. Duquesne Light Co.* 423 F. Supp. 507 (W.D. Pa. 1976), failed to follow the essence of the *Contractors' Association* holding. The judge's decision in *Duquesne Light* reflects only a very general analysis of executive authority under the federal procurement statutes, without any specific finding that the back pay remedy in administrative enforcement actions was reasonably within the contemplation of Congress when it granted the Executive branch authority to provide an economical and efficient system of procurement. Moreover, the decision in *Duquesne Light* also relies on "inherent" executive authority without attempting to define the particular source of that authority. As the Supreme Court and constitutional scholars consistently have advised, such reliance on "inherent" executive power is immediately a ground for suspicion. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 646-650 (1952) (J. Jackson concurring); L. Tribe, *American Constitutional Law* 184 (1978). Thus, OFCCP's back pay authority also lacks any court sanction, as well as being outside any grant of Congressional authority.

Liberty Mutual Insurance Company v. Friedman, 639 F.2d 164, 169 (4th Cir. 1981). In that decision, the Fourth Circuit concluded that application of the Executive Order program to a subcontractor which underwrote workers' compensation insurance for federal contractors was beyond the scope of any grant of legislative authority:

> The key point in Contractors Association is its recognition that any application of the Order must be reasonably related to the Procurement Act's purpose of ensuring efficiency and economy in government procurement. . . in order to lie within the statutory grant.

639 F.2d at 170. 21/

Applying this approach to the use of back pay as a remedy in OFCCP enforcement actions, it must be concluded that there is no authorization under the procurement statute for ordering back pay. Not only is there no relationship between the prospective goals of the Executive Order and retrospective awards of back pay, but there is no nexus between reducing government procurement costs and assessing government contractors for back pay. As commentators have observed,

> it is plainly inconsistent to assume that the back pay regulations, with their enormous impact on the contractors' costs and the resultant increase in the cost of supplies to the government, are within the scope of presidential action authorized by the procurement statutes.

Slominski and Willacy, Back Pay and Extra-Judicial Proceedings: Is the Office of Federal Contract Compliance Programs Exceeding Its Authority?, 41 Ohio St. L. J. 401, 406 (1980). See also, Note Doing Good the Wrong Way: The Case for Delimiting Presidential Power Under Executive Order No. 11,246, 33 Vand. L. Rev. 921, 931 (1980). Another observer has pointed out that:

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21. See also, AFL-CIO v. Kahn, 618 F.2d 784, 793 (D. C. Cir. 1979), where the court applied the nexus test when examining the requirement of Executive Order 12092 that federal contractors certify compliance with voluntary wage and price guidelines established by the Council on Wage and Price Stability. The court stressed the importance of "the nexus between the wage and price standards and likely savings to the Government. . . . The procurement powers must be exercised consistently with the structure and purposes of the statute that delegates that power."

> OFCCP could also be operating at cross-purposes with the anti-inflation program. Back pay for work not actually performed is inflationary. Imposed on the 325,000 contractors and 30 million employees subject to Executive Order 11246, this monetary remedy would have a substantial impact. (Emphasis supplied).

Kandel, OFCCP, Affected Classes, and Back Pay, 5 Employee Rel. L. J., 104, 105 (1979).

Mere assertions that such back pay awards serve an important national purpose beyond economy and efficiency are insufficient to satisfy the the nexus test. In Liberty Mutual, the Court specifically rejected the concept that a regulation promulgated under an Executive Order that traces its authority to a particular statute need bear no relation to the purposes of that statute so long as the regulations relate to national policies reflected in other sources:

> This would render meaningless the simple, fundamental separation of powers requirement recently reasserted by the Supreme Court in Chrysler, that such an "exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of (legislative) power by the Congress. . .," 441 U.S. at 302, and lie "reasonably within the contemplation of that grant of authority." Id. at 306.

639 F.2d at 171.

Furthermore, even if a nexus to the purposes of the procurement act could be shown, the Supreme Court recently has stressed that the Congressional exercise of the Spending Power is contractual in nature. Thus, the legitimacy of legislation enacted under this Power depends on whether there is a knowing and voluntary acceptance of the terms of the contract by the recipient of federal funds. Pennhurst State School & Hospital v. Halderman, 49 U.S.L.W. 4363, 4367, 4369 (U.S., April 20, 1981) (No. 79-1404). Unless Congress imposes an "unambiguous" condition on the expenditure of federal monies, there can be no knowing acceptance of the contractual condition. "[S]cattered bits of legislative history," 49 U.S.L.W. at 4869, such as relied upon by the Solicitor here, do not constitute a clear indication of Congressional intent. Moreover, Congress' Spending Power authority "does not include surprising [those who receive federal money] with post-acceptance or retroactive conditions." Id. Surely, there has been no clear expression of Congressional intent to permit the Spending Power to be used to obtain back pay from Federal contractors, much less permit the agency to attempt to apply this authority to time periods previous to the promulgation of the back pay regulations in 1977.

OFCCP's asserted right to assess large back pay awards against government contractors finds no roots in the authority granted by the federal procurement statute to provide an economical and efficient system of government procurement. Moreover, as shown below, the regulations themselves were improperly promulgated.

B. OFCCP's Regulations Authorizing Orders of Back Pay Were Promulgated Without Regard for Existing Administrative Requirements and Without Consideration of Regulatory Efficiency

The Government has argued that ordering back pay in this case would be consistent with long standing OFCCP policy. In fact, however, OFCCP's practices on back pay have never been articulated in a set of formal regulations. Moreover, the basis and origins of this "policy" have never been defined and fall far short of the clear notice requirements of the *Pennhurst* decision. On the issue of back pay, the agency has sidestepped the requirements of the Administrative Procedure Act and applicable Presidential directives designed to assure that regulatory practices are put into effect only after a thorough consideration of their impact.

The ambiguities in the OFCCP policy are demonstrated, ironically, in a "Policy Clarification" issued by the Director of OFCCP on February 22, 1978 (attached as Appendix B), which noted that clarification was needed regarding the legal effect of the proposed "Affected Class and Back Pay Guidelines" published for comment in the Federal Register on March 26, 1975. The Director's clarification stated:

> *Because the proposed guidelines have never been enacted as regulations, they do not have the force and effect of law.* However, the guidelines would have codified practices and procedures OFCCP had followed in disposing of EEO issues raised in compliance reviews. Thore practices and procedures, of course, may continue to be followed insofar as they remain current policy. However, we should be ever mindful that we are not applying the proposed guidelines but the traditional policies and practices which would have become regulations had the proposal been adopted (emphasis added).

On its face, the Director's Policy Clarification exhibits a remarkable disregard for the requirements of the Administrative Procedure Act and an implicit recognition that its "policy" has force of law. As the recent decision in *Firestone Tire & Rubber Co. v. Marshall* demonstrates, the OFCCP is not immune from the requirement that regulatory policies be implemented through formal rulemaking procedures.22/ What is perhaps even more remarkable about this clarification is the reference to the "traditional policies" embodied by the proposed guidelines. As noted above, when these "traditional policies" on back pay were announced by the OFCCP, the General Counsel of the Department of Defense, one of the largest contract compliance agencies, responded with a strong argument that the policy

> appears to depart from past policy and practice under the Executive Order and the supporting regulations of the Secretary of Labor. . . . it would seem appropriate to have the proposed new rule or regulation published in the Federal Register for the public notice and comment before enactment.23/

As noted, OFCCP subsequently published the proposed policy for public comment on March 26, 1975, but after the comment period the agency never issued final regulations. The OFCCP Director's "Policy Clarification" indicates that one of the reasons these regulations were never adopted was because they would "not apply equitably to every industry" (Appendix B, p. 2). The Director's memorandum thus refutes any assertion now made that the agency's policy has been long-standing, consistent, or fairly applied.

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22. *In Firestone Tire & Rubber Co. v. Marshall*, 24 FEP Cases 1699 (E.D. Tex 1981), the court reversed a decision by the Secretary of Labor and held that OFCCP's requirements for determining underutilization were issued in violation of the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. § 5553. See also, *Chamber of Commerce v. OSHA*, __F.2d__ (No. 77-1842, D. C. Cir. July 10, 1980), where the court concluded that because the Occupational Safety and Health Act contains no provision requiring pay for walkaround time, the agency's rule requiring such pay was "an attempted exercise of legislative power [and] it must be vacated for failure to comply with the procedures specified by. . . 5 U.S.C. § 553." Section 553 of the Administrative Procedure Act was enacted to give the public an opportunity to participate in the rulemaking process. *"It also enables the agency promulgating the rule to educate itself before establishing rules and procedures which have a substantial impact on those regulated."* (Emphasis supplied). *Texaco, Inc. v. v. FPC*, 412 F.2d 740, 744 (3d Cir. 1969).

23. See Letter from Martin R. Hoffman to William Kilberg, Solicitor of Labor, April 29, 1974 (attached as Appendix A, pp. 2-3). The General Counsel to the Secretary of Defense also stated that his agency questioned the legal basis for a back pay requirement and the authority of the OFCCP to seek back pay under the present Executive Order.

On September 17, 1976, the agency published a notice of proposed rulemaking which included a brief reference to back pay as a remedy. These new regulations, explained the agency, would "codify OFCCP policies regarding back pay and affected class relief which have been in effect for several years.24/ This particular proposal was issued in final form on January 14, 1977, with another explanation stating that it simply codified existing policies.

In light of the history of OFCCP's "policy" on back pay, it is evident there was no coherent policy "codified" by the 1977 regulations. Indeed, under the laws of administrative procedure, because the 1975 proposal had never been issued in final form, there was no formal policy at the time the 1977 regulations were adopted. As the Director's 1978 Policy Clarification confirms, the 1975 proposal was never enacted and does not have the force and effect of law.

What must be concluded, therefore, from this history of confused agency action, is that OFCCP's assertion that it can order back pay in enforcement actions actually was a departure from existing formal contract compliance procedures when it was proposed in 1974 and 1975, that that proposal was never formally adopted, and that, therefore, the proposal cannot serve as the valid basis for OFCCP policy today. Furthermore, this history indicates that the back pay proposal has never been subjected to the scrutiny required by formal rulemaking procedures. "Any rulemaking should, of course, be tailored to elicit maximum information and input,"25/ but the only formal rulemaking here involved the 1977 regulations, and those regulations were couched in terms that would tend to discourage comments on the basis that the regulations purported to do nothing more than perpetuate existing practices.

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24. 41 Fed. Reg. 40342, September 17, 1976. See also 42 Fed. Reg. 3456, January 18, 1977. In the preamble to the final rule, the agency stated that the many comments received indicated a need for further consideration of the major revisions and re-designation proposed on September 17, and that therefore that major revision was being postponed for such further consideration. 42 Fed. Reg. 3454.

25. South Terminal Corp. v. Environmental Protection Agency, 504 F.2d 646, 660 (1st Cir. 1974).

It should also be noted that in promulgating the 1977 regulations, the agency apparently chose to ignore the requirements of Executive Order 11821, issued November 27, 1974, and Executive Order 11949, issued on December 31, 1976. Taken together, these two orders plainly required that any major rule emanating from the executive branch of government should include a statement certifying that the inflationary impact of the rule on the nation had been carefully considered. Among the types of impact to be considered was the cost impact on consumers, business, markets, or the Federal government. As noted above, the assessment of back pay for time never worked has a tremendous inflationary potential, and surely has an impact on costs for consumers, businesses and the federal government. The 1977 regulations, however, contain no analysis of the economic impact of the back pay regulations.

This failure to properly consider the impact of the back pay remedy, combined with the ambiguities as to what constitutes OFCCP's "policy" on back pay, demonstrates that the "consistency and continuity of policy" argument by the Government is not credible. The Secretary must approach this case with the realization that he is being asked to implement a policy on back pay which has never been properly promulgated or analyzed in the manner necessary for sound regulatory practices.

The back pay policy of the OFCCP has been based upon a misperception of the agency's authority, coupled with abundant confusion over the asserted source of that policy and a failure to comply with legal requirements to subject the policy to public comment and scrutiny. Much of the government's argument for its asserted ability to obtain retrospective relief is based only upon its past success in extracting settlements from contractors who faced the alternative of expensive and protracted enforcement procedures and the likelihood of lost contracts.

If this Administration accepts this approach, it will encourage the disruption of the commendable affirmative action aspects of the program. It also will be enforcing a regulatory approach that is manifestly at odds with the Congressional perception of the powers of the OFCCP and with the Reagan Administration's view of proper regulatory practices.

Therefore, we encourage the Secretary to recognize the inappropriateness of retrospective relief under Executive Order 11246 in this case; to notice appropriate changes in the regulations eliminating any language referring to back pay or any other affected class relief; and finally to encourage the President to amend the Order to state specifically that back pay and other retrospective relief is not available.26/ Moreover, as noted above, a decision in this case should be deferred so that it may be made consistent with any future changes that might be made in the OFCCP's regulations.

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26. There is no question that victims of discrimination should be awarded appropriate relief, including back pay. The point, however, is that Congress authorized such relief under Title VII, not Executive Order 11246. As the Fifth Circuit held in United States v. East Texas Motor Freight System, 546 F.2d 179, 185 (5th Cir. 1977), Title VII was based upon Congress' perception of what was necessary to afford "complete relief" to victims of discrimination, and "[i]f such relief is the 'most complete. . . possible,' the Executive Order could scarcely be interpreted to demand more." This point was succinctly recognized by General Counsel Hoffman's letter to the Solicitor of Labor which stated (Appendix A):

> Of course, the apparent prospective focus of Executive Order 11246 does not mean that victims of past discrimination are without recourse for back-pay remedies. Congress has enacted equal employment legislation (42 U.S.C. 2000e-5) which provided for EEOC and Department of Justice representation of victims of discrimination in claims for back pay and other remedies. Thus, other back-pay procedures with more specialized Federal agency assistance are in operation.

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OVERSIGHT HEARINGS ON EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Part 2

FRIDAY, AUGUST 14, 1981

House of Representatives,
Subcommittee on Employment Opportunities,
Committee on Education and Labor,
Los Angeles, Calif.

The subcommittee met, pursuant to adjournment, at 9:15 a.m., in the Muses Room, California Museum of Science and Industry, Los Angeles, Calif., Hon. Augustus F. Hawkins (chairman of the subcommittee) presiding.

Members present: Representatives Hawkins, Weiss, Washington, and Peyser.

Staff present: Susan D. Grayson, staff director; Ed Cooke, legislative associate; Carole M. Schanzer, legislative assistant; and Edie Baum, minority counsel for labor.

Mr. Hawkins. The Subcommittee on Employment Opportunities of the Committee on Education and Labor is called to order.

Ladies and gentlemen, this is the third hearing in a series that the subcommittee will conduct in exercising its oversight of the Federal Government's enforcement of equal employment opportunity laws.

The previous hearings held on July 15, 1981, in Washington, D.C., and on August 11, 1981, in Chicago, Ill.—in the district represented by our distinguished colleague, Mr. Washington—and these hearings focused on the emerging equal employment opportunity policies of the Reagan administration as disclosed both by statements of principal Cabinet officials and by actions of those officials regarding matters relating to the enforcement of equal opportunity laws. The statements to which I make reference suggest sympathy with the objectives of the regulated and unfortunate disinterest in the plight of the classes of individuals presumably protected by equal employment opportunity laws.

There is much to substantiate these concerns. As regards the budget, for example, the U.S. Commission on Civil Rights recently observed:

> After examining the Administration's proposed budget, the Commission is concerned that history may be repeating itself and that the nation may be entering another period of civil rights retrenchment.
>
> Reducing allocations for specific civil rights enforcement activities will mean that millions of Americans will continue to be victims of discrimination in education, employment, housing, and government services.

We examine this morning the scope and continuing validity of the concept of affirmative action in search of bases for insisting upon the continuation of valid and successful programs as well as meaningful and effective alternatives to wasteful, inefficient, and unsuccessful schemes. Thoughtful and prudent consideration of needed improvements in EEO programs can yield benefits for all. Hasty, ill-considered changes will signal retrenchment and abandonment of our longstanding national commitment to equal employment opportunity. Thus, changes should not be permitted to occur at the expense of program effectiveness. Commitment, without meaningful and determined action, will yield nothing. As a recent AFL-CIO policy statement recently observed:

> Passive reliance on promises of voluntary action has proven unavailing. The undeniable truth is that, standing alone, all the pledges and guarantees of equal opportunity are meaningless. Only aggressive action to open doors previously shut to women and minorities will work.

As in our earlier hearing, we seek your advice, insights, and the benefit of your experience in this community to aid our oversight responsibility. We look forward to hearing from each of the witnesses who will testify this morning.

May I just briefly present the members of the committee who are present this morning?

At my far right is Congressman Ted Weiss from the State of New York; to my immediate left is Congressman Harold Washington of the State of Illinois; and to my far left is Congressman Peter Peyser, also of the State of New York.

Would any of you gentlemen care to make a statement at this point?

[No response.]

Mr. HAWKINS. Without any additional introductions at this time, we are delighted to present as the first witness before the subcommittee the distinguished Governor of our State and certainly one of the most outspoken leaders on the national scene today. We commend him on the statements recently issued by him in connection with the Governors' Conference. It was certainly a breath of fresh air and a very wholesome one to have someone speak out against some of the policies that are in operation today.

Unfortunately, we have not heard enough of this, but certainly as a Californian and a longtime supporter of the Brown administrations—having served in the previous Brown administration, who is the father of our Governor today—I am delighted from a personal point of view and certainly proud from the viewpoint as chairman, to have such an outstanding witness present views to the subcommittee.

Governor Brown, we welcome you and ask that you be seated at the table.

STATEMENT OF HON. EDMUND G. BROWN, JR., GOVERNOR, STATE OF CALIFORNIA

Governor BROWN. Thank you very much, Mr. Chairman.

Mr. HAWKINS. We have your statement which will be entered in the record in its entirety. You may deal with it as you so desire.

Governor BROWN. Thank you very much, Mr. Chairman. I am going to submit this statement, which I entitle "Sophisticated Job Training—The Unseen Issue of the Eighties."

Perhaps the fundamental failing of the Republican administration is that they are neglecting the most powerful resource in America, namely, the people of America; their skills, their talent, and their potential. It does not do any good to cut so-called redtape to enrich those who already have accumulated huge amounts of capital if millions of our citizens are underemployed and unable to make their maximum contribution to the Nation's well-being.

America is a shrinking minority of the world's population. We are about 6 percent today. We will be about 4 percent of the world's population in the year 2000. The principal challenge is a lack of job skills.

We all know there is a rising unemployment level. We know that there are people standing on street corners, that there are unemployed people in every sector of the country, but the paradox is, side-by-side with the unemployed people, there are jobs that are going begging. We do not have enough nurses in Martin Luther King Hospital, whereas in the same neighborhood there are people out of work.

We do not have enough people for the electronics industry, but we have people out of work in the same neighborhood.

The State of California can't find enough computer programers, yet we are paying massive sums of unemployment insurance.

The paradox of today is that people are looking for workers while, at the same time, workers are looking for jobs. The explanation of this paradox is the anachronistic, inadequate job training program in this Nation. The Republicans cut back $3 billion in CETA. That was a profound error. We should be expanding our funding of intelligent job training programs.

The Japanese are already turning out more electrical engineers than the United States, with half the population. What is true of an electrical engineer is also true of various technicians, computer programers, nurses, licensed vocational nurses at every level.

The Reagan administration has not been able to total up a human balance sheet. It is time for them to look at the model of job training in California. We have something that we call CWETA, the California Worksite Education and Training Act. I believe this should serve as a national model. It is a State-funded program. We haven't asked any money from the Federal Government. We have run it our way.

Our way is to get business or Government to tell us the skills they need and then for the CWETA program to provide the apprenticeship training. What it does is it allows someone to get an income, to get the training, and to have a hope of upward mobility. Those are the ingredients.

There are plenty of dead end jobs that people do not want to take. What we need to do is to restructure the secondary labor market and provide a career ladder so that people can be paid, can be associated with schools or regional occupational training programs or other programs of instruction in cooperation with their particular job.

Today we have a nursing program at our county hospital, and in that county hospital we are taking nurses' aides and on the job we are teaching them to become licensed vocational nurses. We have management, we have labor, we have a joint apprenticeship program, and the State is providing a subsidy for that. Then for the licensed vocational nurses, we are upgrading them to full registered nurses.

The program is working. There is nothing like it anywhere else in America. What will work for nurses can work for electronic technicians, for computer programers, and a host of other jobs that are going unfilled.

In this State employers are going to Europe, are going to Mexico, are going to the Middle East, and are going to Asia to find skilled workers. I am not just talking about aerospace engineers. I am referring to nurses, I am referring to middle-level technicians, and a host of other jobs.

The 7-percent unemployment reflects a bankrupt job training philosophy and program in the United States, and the challenge is not just to help the people, which we ought to do out of compassion and out of human commitment, but the challenge is to recognize that America is going to decline as an economically powerful nation unless all our citizens are brought up to their level of talent.

Whether we are talking about senior citizens, a minority, a woman, a disabled person, or a white middle-class American, effective job training is what is needed, and we are not now getting it.

Most of the jobs that will exist over the next decade are barely even conceived of. Therefore the schooling, the apprenticeship, the training has to be continuously upgraded. A time of unemployment can be a problem or it can be a great opportunity. If we had a job training program in effect whereby unemployed workers can be given a stipend, can be retrained, then a slack in the economy is an opportunity to equip the people of this country for the next round of economic growth.

That is not what happens. When unemployment rises, people are demoralized, their health gets worse, the fabric of society weakens. We do not have and we must develop immediately a national policy of providing training and retraining for people of all backgrounds so that we can compete in the international market.

We find now in electronics we are losing out in key sectors to the Japanese. In appliances, in autos, and even in satellites, we are being pressed by other nations. The answer is not to cut back on training or research or encouragement of people to upgrade their skills, but to provide a framework by which we can lift up all the people in society for the benefit of the society as well as those individuals.

My testimony goes on at great length. We have more detail of how this is working, but this is one job training program where everybody wants it, and I believe we are at a strategic moment in the history of this country. The Great Society of Lyndon Johnson has been temporarily repudiated. I say temporarily. There were great efforts made to upgrade people's skill, from Head Start to VISTA to manpower training and all the rest of it.

At the time these programs were coming into being, it was very easy, in a place like California, to import workers from the Midwest and from the South and even from other countries. That is no longer the case. Housing is not affordable. The freeways are getting crowded. We now have to face the stark reality that instead of taking people from 3,000 or 5,000 miles away, we ought to go right into our own neighborhoods and our own back yards and employ the people that are here.

In order to do that, it takes not a plane ticket from Iowa or from Iraq or from Taiwan, it takes an education, a training, an apprenticeship program. We no longer have this great surplus of people. We have a shortage of people in key sectors, and because the housing, because of the transportation, because of the lack of infrastructure brought about by cutbacks in State and Federal Government, we now are poised for a new thrust forward in the development of human capacity and human skills.

Not only do we now have a shortage, but we have an opportunity with computers and more sophisticated knowledge about manpower training to put this kind of a program in place.

So instead of cutting back, instead of cutting back on CETA, we should have been dramatically increasing our job training effort. Maybe CETA was flawed. Maybe there were aspects that were wasteful. Accept that as true for the sake of argument. Nevertheless, I know from the business people that they cannot get enough skilled people. I visited IBM 2 weeks ago in San Jose. This company told me they are 3 years behind in their backlog. Their sales are increasing at 50 percent a year.

So I said "Why are you 3 years behind, because of Government taxes?" No.

"Is it because of EPA restrictions?" No.

"Is it because of OSHA?" No.

"Is it because your workers are asking too much money and you can't afford to pay them?" No.

"What is the reason?"

There is only one reason. They cannot get the skilled personnel to do the work, to design the process, to be able to put their product on the market. They do not have enough bachelor degrees, master's degrees, Ph. D's, technicians, junior college graduates, or just plain old mechanics that can do the work to get this IBM plant current in their delivery of products.

I believe that story is true all over the State.

Business is being held back not by Government redtape, not by taxes, not by efforts to protect worker health, not by efforts to protect the clean air, or the soil, or to protect us against chemicals. They are kept back because of the inadequate education and manpower training program.

The No. 1 challenge of this decade that is unrecognized in the public mind and in the political debate is job training and education. The Republicans are cutting back on both, but the fact that somebody has more money in his pocket because you have cut out the inheritance tax, or because commodity dealers can get a tax credit deduction, and because the oil company's can get $11 billion less in this windfall profits tax, and because of a number of these other things, that is not going to mean that the local school is training their students better. Nor does it mean that we are getting more science teachers, that we have more regional occupational programs, or that small business can afford to subsidize unskilled workers until they become productive members of the work force. They cannot.

That is going to weaken the productivity of this country. It is going to weaken our competitive position, and things are going to get worse, not better, until the Government in Washington turns around 180° and recognizes that the No. 1 challenge is not anything called redtape, it is not anything called general taxes, it is not anything called environmental protection; it is the inadequate commitment to the people, their skills, and their motivation.

The country of Japan knows that. That is why they are beating us in a number of significant endeavors.

In 1945, Japan—and I use that as an example with the great admiration for what they have done—had a per capita income of $20; $10 per person per year was the national income of Japan in 1945. They had no oil. They had no iron. They imported half of their food.

Now, 35 years later, they are almost up with us. How did they do it? They did it by one simple thing: They invested in the human talent of their people, education, research, and training. That is No. 1.

No. 2, they had a cooperative strategy of business, labor, and government.

No. 3, they had a strategic plan. They knew what they wanted to go after. Textiles first, then televisions, then pocket calculators, and next satellites. They know where they are going. They didn't leave it to Adam Smith's invisible hand of the free market. They had an organization called the ministry of international trade and technology. These people sit down with government, with labor representatives, and they say over the next 10 years we will get this market, this will be our share. Then the schools put out the people; the businesses train the workers. They do not lay anyone off. They proceed forward.

Our policy of intentional unemployment, of leaving everything to the invisible hand of the market, of kicking labor out, of polarizing them and having no strategic industrial plan is a losing policy. It is reflected in our balance of payments. It is reflected in our productivity. It is reflected in our lack of competitive position.

It is also reflected in the fact that the No. 1 event in the business community is the merger of one big company with another big company and the bankruptcy of ordinary businesses. Business bankruptcies are up 95 percent in the last 2 years. The capital of this Nation is being diverted to finance excessive tax cuts, a military buildup through the Government borrowing, and excessive mergers through the private capital market.

What we ought to be doing is having an industrial policy, a manpower policy, tying the two together, all based on this one premise, that people are the key resource. If we have that, and if this committee can bring this to the attention of the Nation, then I think we are ready to turn the circle and get off of the negative, debilitating, self-defeating rhetoric that we have heard over the last 12 months and focus on what really challenges America. That is the lack of people who are trained to do the work of the economy of the next 10 years. This committee has the jurisdiction. You have the opportunity.

I pledge my cooperation from the State of California and in every other way because I think we literally have a balance not just for the unemployed but for America itself, because if these unemployed people are not trained, I have no doubt that imports are going to engulf this country, that protectionism is going to rear its ugly head, that we are going to have trade wars like we did in the twenties and thirties, that we are going to have a deep persistent recession, and then we are going to be into real wars.

That is the path that we are now on, the Coolidge-Hoover philosophy that is being adopted. The next thing will be the Smoot-Hawley tariffs because of the rising unemployment. After that comes what happened in the thirties and what happened in the forties. The only difference is the timeframe will be compressed not to two decades but for a few years.

We can prevent it, but only if we can wake up the American Nation before it is too late.

Thank you very much.

[The prepared testimony of Gov. Edmund Brown follows:]

Prepared Testimony of Edmund G. Brown, Jr., Governor of California

SOPHISTICATED JOB TRAINING—THE UNSEEN ISSUE OF THE EIGHTIES

I would like to speak this morning about California's human capital—its people—and what we are doing to ensure that this precious capital is used to the fullest.

We are told we have a shortage of jobs in this country and we have 7.5 million unemployed to prove it. But in the electronics industry, in our nation's hospitals and in the aerospace business we are told we have a critical shortage of skilled labor. I say what we have is not a lack of workers but a shortage of the political will to train people who are unemployed and underemployed to do the jobs that are available today.

Labor shortage and unemployment exist side-by-side, sometimes in the same neighborhood. Lood at the help-wanted ads. Talk to a hospital administrator. Check the personnel offices in the aerospace industry or the electronics industry. Then check out the unemployment lines on the streets of South Central and East Los Angeles.

We must candidly confront this cruel paradox and resolve it through a deep and pervasive commitment to modern and sophisticated learning and skill training.

America's human capital

We can no longer state with confidence that the quality of America's workforce—its human capital—will continue its pre-eminent position. A shortage of skilled technicians as well as Ph.D.'s threatens our ability to compete abroad and threatens our social and economic progress at home. C. Lester Hogan, a director of Fairchild Camera and Instrument Corp., recently warned:

"Though there are many important issues worth our collective effort. . . . as I look at the next ten years, I worry about international competition. If we lose the battle in the marketplace, we will lose because we do not have the quantity of trained people necessary to keep leadership in the industry. This is the single most important issue our industry faces—bar none! Other things will slow us down and make it tougher, but we can still win. The lack of qualified technical people, however, means we cannot win."

This is an issue that affects not only America's place in the world economy but also how businesses compete with each other. Some industries have made a science out of pirating employees from one company to the next, offering bonuses and vacations and building swimming pools and gymnasiums to attract workers. The American Electronics Association, which recently predicted the need for technicians in the electronics industry will double by 1985, says:

"Because essentially the same technical talent swirls from company to company without signficant increase of numbers added to the total pool, the expensive efforts to find technical talent—often from a 'firm down the street'—have been counterproductive to retention, costly to indvidual companies large and small and inflationary to the economy as a whole."

Most important, this entire process of pirating people instead of training them does nothing to help those without a job. Nor does it help those marginally employed in an entry level, dead-end job who could fill the technical jobs if they were given a chance to learn while they continue to work and earn a living. Whos is better qualified by experience and interest to fill a technical electronics job than a person who has worked on an electronics assebley line? In the health care field, why not give people already working as nurse aides and vocational nurses a chance to learn to become registered nurses?

The labor shortage in health care

The shortage of skilled labor creates serious problems in the health field. Statewide, about 20 percent of all nursing positions are vacant and each year the number of vacancies increases. Some hospitals have been forced to turn away patients for lack of nurses. Fewer nurses perform too much work and the potential for life-threatening mistakes grows. To cope with the problem, hospital administrators behave like electronics administrators. They pirate nurses from other hospitals. They recruit from out of state and out of the country. They pay bounties and give bonuses and still cannot find enough nurses.

I demand leadership from the new administration in Washington to intensify the process of matching the skills of people with the jobs or country needs. It is a problem that affects business and its employees and America's position in the world. But what we find in Washington are the budget cutters, hard at work, steely eyes to the balance sheet. The principal initiative of the new administration in the field of jobs has been to cut the main federal job training program in half from $7.9 billion to $3.9 billion. But they didn't stop there. They cut regular unemployment assistance. Then they cut over a billion dollars from special unemployment benefits. And they cut 10 percent from California's Employment Development Department and other state employment offices that help out-of-work people find jobs.

And what have the budget cutters accomplished? They reduced the numbers on a ledger. But what does that do for the unemployed? They reduced benefits for those without jobs; they made it harder for the state to help them find new jobs; and they cut the training budget in half.

No solutions from Washington

What they apparently have forgotten is that all the budget cutting in Washington will not train one single nurse. Nor will it train one of the skilled technicians we need to compete with Japan. Nor turn out one of the thousands of machinists we need to rebuild America's industrial plant. Maybe the Reagan administration improved the balance on its ledger. But they didn't solve the problem; they shifted it to the individual ledgers of the unemployed and to the businesses that can't find enough skilled workers.

The time has come to see if the Reagan administration's budget cutters can total up a human balance sheet. It is time to see if they can build a solution to the human problem of preparing people to perform the jobs that must be done to continue and social progress in this country.

In California, I have instituted a new approach to job training, the California Worksite Education and Training Act—CWETA—that matches the supply with the demand for skilled labor. CWETA, authored by Senator Bill Greene, is based on the simple notion that business must work together with labor, government and educators to solve our common social and economic problems. Through CWETA we have adopted four principles for training:

First, business must decide what jobs we will train people to fill. We don't ask the so-called experts in government or academia what jobs they think are in demand or will be in demand. We ask the business executives and personnel managers what jobs they have to fill today and in the near future and what jobs they want to train people for.

Second, we train only for jobs with a future; jobs that turn into careers. Jobs that not only put people to work but put them to work earning enough money so they have a chance for a decent living.

In too many job programs over the years we have adopted the unspoken philosophy that poor people, that disadvantaged women, Blacks and Chicanos and Asians and the handicapped, are capable of little but menial work. We shuttle them into a secondary economy where a "good" job is one that pays the minimum wage, where skills are neither necessary nor attainable and when job security lasts only from one paycheck to the next. In this second class economy we perpetuate second class citizenship and deny people a chance to move into the mainstream economy that is growing, that has a future with better wages, better working conditions and an opportunity to move up the economic and social ladder.

Job training based on California's CWETA model rejects this unspoken philosophy and prepares people for good jobs with a future. We know that America desperately needs all of its people to work at their highest possible level of skill.

The third principle of CWETA derives from the simple fact that employment itself is one of the most effective forms of training for a job. Hospitals report that graduates of nursing schools—when they can get them—require six to nine months added training on the job before the nurses can work productively. Graduates of school programs in auto repair and electronics likewise need the real life experience of working on a job before they can be considered fully trained. CWETA's system of training is based on apprenticeship, the oldest form of job training. Apprentices progress on the job through increasingly complex duties learning complex skills from supervisors and others with experience performing the work. After working hours apprentices attend local schools which offer courses related to the on-the-job training. Like apprenticeship, CWETA training is based on the job, not just on the classroom.

CWETA programs are tough

The fourth principle under which CWETA operates is quite simply that there is no free lunch. Over the years some ill-conceived training programs have been developed in which employers find they can make more money off government training subsidies than they can from running their businesses. Likewise, we have created incentives for some people to migrate from training program to training program rather than from training program to job. CWETA training programs are tough. They are tough on employers and they are tough on trainees. We don't train for employers who want a subsidy; we train for employers who want skilled labor. We don't subsidize trainees while they go to school; CWETA trainees attend classes at night on their own time. CWETA programs require a contribution from every employer, every participant, every school and every union involved. Everyone has something to lose if the program fails and something to gain if the program succeeds. We believe that is a prescription for success.

We have devoted $25 million in state funds to CWETA. So far we have authorized training for 6,700 people in professions ranging from nursing to electronics to machine trades to agriculture. Three hundred employers large and small are involved around the state. Many of the projects are new apprenticeship programs. We have created the first apprenticeships for nurses in the entire country and through CWETA we are now training more nurses than any single community college in the state. We have helped the Fluor Corporation set up the largest apprenticeship program in engineering in the country. The program will train 500 people as skilled engineering designers. We will provide training in the latest computer drafting techniques. We are developing an apprenticeship program for computer programmers. We have trained machinists and electronics workers.

Most of the training programs are upgrades. We take people who are already working in a field at the bottom of the economic and social ladder. These people already know their way around inside a plant or an office or a hospital, and CWETA gives them a chance to move up while they continue to work and earn a salary. After they move up, a place at the bottom is open for a person without a job at all and that person then has a chance to climb the ladder.

Training nurses in Los Angeles

Let me give you an example. At Los Angeles County-USC Medical Center in East Los Angeles, 40 percent of the nursing positions are vacant. The unemployment rate for the same neighborhood is about 14 percent, twice as high as unemployment in the whole of Los Angeles County. Yet the county cannot find trained licensed people to fill 40 percent of its nursing positions. So with the help of the Service Employees International Union which represents the nurses and the Los Angeles Community College District we created a CWETA program. Forty-five nurse aides are being trained as licensed vocational nurses and sixty licensed vocational nurses are being trained as registered nurses.

They all will continue to work at their current jobs. The college has set up special classes at the hospital that the nurses attent after work. The nurses are registered apprentices under the supervision of a labor-management apprenticeship committee. In addition to completing all the courses required for licensing as nurses, the apprentices work and are supervised on the job so they can begin to relate what they learn in class to what they do every day in the hospital. Through CWETA the state pays some of the costs, the hospital pays some of the costs and the college pays some of the costs. When the program is complete in a year and a half, the hospital will have 105 more nurses. Nurses who are new but experienced. Nurses who already know what it is to be a nurse, who need no on-the-job training and no orientation to the hospital. And then the hospital will hire more people as nurse aides and LVN's at the bottom and process starts all over.

That's CWETA. It's training for a real job for an employer who needs skilled workers. It's training for a job with a future and training that is based on work, not school. It is a program in which everybody—employers, schools, unions, employees and the state—contributes and works together. It's an approach to job training that is working in California. It's a serious solution to a serious problem. It is a national model for building the nation's human capital and I recommend it to you.

PRESS RELEASE NO. 331

Declaring "the time has come to see if the Reagan administration's budget cutters can total up a human balance sheet," Governor Edmund G. Brown, Jr. today said the federal government should adopt a California job training program as "a national model for developing the nation's human capital."

"We can no longer state with confidence that the quality of America'a workforce—its human capital—will continue in its pre-eminent position," the governor said. "A shortage of skilled technicians as well as Ph.D.s threatens our ability to compete abroad and threatens our social and economic progress at home.

"We are told we have a shortage of jobs and we have a 7.5 million unemployed in the United States to prove it. Yet in the electronics industry, in our nation's hospitals and in the aerospace business we have a critical shortage of skilled labor. I say what we have is not a lack of workers, but a shortage of the political will to train people who are unemployed and under-employed to do the jobs that are available today.

"Perhaps the Reagan administration's budget cutters improved the balance on its ledgers," the governor continued, "but they didn't solve the problem. They shifted it to the individual ledgers of the unemployed and to the businesses that can't find enough skilled workers.

Governor Brown made his comments in testimony before the Subcommittee on Employment Opportunities of the House Committee on Education and Labor. Brown called for a fundamental restructuring of the nation's job training efforts and said the California Worksite Education and Training Act (CWETA) should serve as a national model for training people to fill the skilled technical jobs in demand today.

"In too many job programs over the years, we have adopted the unspoken philosophy that poor people, that disadvantaged women, blacks and Chicanos and Asians and the handicapped, are capable of little but menial work," Brown said. "We shuttle them into a secondary economy where a 'good' job is one that pays the minimum wage, where skills are neither necessary nor attainable and where job security lasts only from one paycheck to the next. In this second class economy we perpetuate second class citizenship and deny people a chance to move into the mainstream economy that is growing, that has a future with better wages, better working conditions and an opportunity to move up the economic and social ladder.

Brown pointed out that labor shortages and unemployment exist side-by-side, sometimes in the same neighborhoods. "Look at the help wanted ads," he said. "Talk to a hospital administrator. Check the personnel offices in the aerospace industry or the electronics industry. Then check out the unemployment lines or the streets of South Central and East Los Angeles.

"I demand leadership from the new administration in Washington to intensify the process of matching the skills of people with the jobs our country needs," Brown continued. "But what we find in Washington are the budget cutters, hard at work, steely eyes to the balance sheet. The principal initiative of the new administration in the field of jobs has been to cut the main federal job training program in half. That reduces numbers on a ledger. But all the budget cutting in Washington will not train one single nurse. Nor will it train one of the skilled technicians we need to compete with Japan. Nor turn out one of the thousands of machinists we need to rebuild America's industrial plant. The time has come to see if the Reagan administration's budget cutters can total up a human balance sheet. It is time to see if they can find a solution to a human problem by preparing people to perform the jobs that must be done to continue economic and social progress in this country."

CALIFORNIA WORKSITE EDUCATION AND TRAINING ACT FACT SHEET

The California Worksite Education and Training Act (CWETA) is a $25 million state job training plan that helps employers set up projects to train the workers they need. The programs normally include structured on-the-job training combined with related classroom instruction at a community college or an adult school.

CWETA requires a unique collaboration between employers, unions, employees, schools and the state to train workers based on these four principles:

Business decides what training will be provided, helps design the training program and guarantees to hire all those who successfully complete the training.

Training is provided only for good, skilled jobs that turn into careers with a long term future.

Training programs are based on realistic, on-the-job training and the notion that employment itself is one of the most effective forms of education. Like apprenticeship, the oldest form of job training, people in CWETA training progress on the job through increasingly complex duties learning complex skills from supervisors and others with experience performing the work. After working hours apprentices attend local schools which offer courses related to the on-the-job training.

The training programs are tough. People in training normally work a full day and attend classes at night. Employers, schools and unions are all required to contribute money and/or services.

So far training has been authorized for 6,700 people in professions ranging from nursing to electronics to machine trades to agriculture. Many of the programs are new apprenticeship programs.

Among the programs CWETA has set up are:

The first apprenticeship programs for nurses in the country. CWETA is training more than 850 nurses, more nurses than any single community college in the state. Included among the nursing programs is one to train 105 nurses at Los Angeles County-USC Medical Center.

The largest apprenticeship program in engineering in the country with the Fluor Corporation in Irvine. The program will train 500 lower level Fluor employees for jobs as skilled engineering designers.

Training for drafters and electrical designers at Bechtel Power Corporation in Los Angeles.

Training in welding and mechanics for 20 field workers employed on Yolo County farms to allow them to work through the winter months.

Training for electronics assemblers and electronics technicians at Gulton Industries in Los Angeles.

A project to upgrade 400 electronics assemblers to electronic technician positions in Silicon Valley in the San Jose Area and then train 450 assemblers to replace those who moved up.

Mr. HAWKINS. First of all, let me ask you something to which you have obliquely alluded but which I think deserves some amplification.

In this State, in the 1960's, the Kerner Commission found that there was a direct relationship between unemployment and the crime rate. Evidence presented to this committee has repeated this rather close correlation between unemployment and social unrest and criminal aggression. I think that most scientists today, sociologists and others do subscribe to the theory that rising unemployment does create these conditions.

As a result of the severe cutbacks at the national level and the inability of State governments to a large extent to fill the gap, do you believe that in this State we face perhaps a period of social unrest and an increasing crime rate? If so, what policies do you think would present an alternative?

Governor BROWN. Well, it is difficult to predict the course of events. I would not attempt to do that.

I will say this: There is a crime problem. The crime rate is rising. We are locking up more people than ever before. There are very few places in the world where we are locking up more people. We have the toughest laws in the country. We have the toughest judges. Our prisons are bulging.

The State senate just yesterday presented to the people for the June election a ballot to build more prisons. We are now taking into our prisons enough people every month to build a new prison.

The situation is out of hand. It is going to cost hundreds and hundreds of millions of dollars.

We have followed to the letter the conservative prescription for dealing with crime: Mandatory prison sentences, more people committed to jail and prison. That is the track we are on, and that course will be set for a significent period of time.

On the other hand, you ask what happens with the cutbacks and the rising unemployment. I will tell you what I believe is going to happen, that the American economy is going to suffer, and the American economy not just in poor neighborhoods but in middle-class neighborhoods. When that happens, people are going to wake up and find out that what is going on in Washington is not a built-up America but it is a neglected America, and it is a total neglect of the global realities of international competition.

What is required is adequate job training. Maybe that sounds like just something so obvious, but to me, what I see with respect to the neglected job training is a scandal and a self-inflicted wound to the American Nation. There is no reason why we cannot produce as good a car as the Japanese. There is no reason we cannot produce as good a hand calculator. There is no reason why I have to buy a $29 watch from a Japanese company. It can be made right here in Los Angeles.

What we lack are the new means, the manufacturing processes, and the skilled people to put all of that together. We do not have it because our educational system, our job training system, and our tax system has not been oriented in this direction.

What is happening now in Washington is that they are marching in the opposite direction. They do not realize that you need a conscious, industrial policy if you are going to compete with people who are following the same objective. It doesn't do any good to say we are going to try to market, when France has an indicative plan, when Germany has codetermination, and Japan has their own policy of bringing business, government, and labor together.

The policy being followed is a divide-and-conquer, polarize, alienate, and then hope tax incentives will bail things out. I do not see any evidence that tax incentives alone will do the job.

In answer to your question: We have the ingredients which do include some tax incentives but have to include a cooperative spirit. That cooperative spirit is being undermined by the meat-ax cuts and by the shell game of shifting to already underfinanced State and local government the responsibility to build up America.

You can say all you want that whether someone is trained in Watts or San Fernando, that is a local problem, but I say it is a national problem if we do not have the skilled people to produce the computers, the airplanes, the appliances, and the other things this society needs. Therefore, we have to import them.

That is why manpower training is not just an issue for the unemployed; it is an issue for the affluent, it is an issue for the middle class, it is an issue for the Defense Department, because what we are doing is squandering the human resources in the misguided notion that Calvin Coolidge-Herbert Hoover economic policies will bail us out. They didn't work then and they are not going to work now. Sooner or later people have to take responsibility for their destiny and plan. That is going to happen but, unfortunately, it may only happen after a lot of people have to suffer in the meantime.

Mr. HAWKINS. Governor, this committee had an opportunity about a year ago to view one of the training programs to which you referred, the CWETA program. That was in the city of Oakland.

We did visit one hospital which had this program in operation. As a result of that, we had developed a cooperative relationship with the State training program that I thought was a very ideal model. The hospital was in the process of taking LVN's, licensed nurses, and training them to become registered nurses who were in short supply.

Then with CETA moneys they were filling the spots, the entry level spots as licensed vocational nurses through the CETA program, which was a cooperative relationship between the Federal Government and the State government which tended to make the money much more effective in reaching its objective.

The only criticism we found with the CWETA program—and it was a programmatic criticism—was that it was not adequate enough. We are not putting enough money into such programs. That seems to be the problem with most of the programs.

Assuming that the budget cuts will lead us into the situation in which the Federal Government then will be saying to you at the State level, we are giving you the moneys, although it is less money, but that you can go ahead and use it as you so desire. Do you believe that the States—and this State in particular—can assume this load without any strings attached to reach the problem and to expand such training programs to fill the gap that will be created by the abolition of CETA and other training programs?

The administration abolished the program without any alternatives, except to say now you can go to the State level and to the local level and those officials are supporting me and they are going to take care of the problem. Do you believe that the State is in a position to do that and to expand these training programs to meet the skill shortages that you say do exist and this committee has verified?

I know it is a rather complex question.

Governor BROWN. The answer is no for the simple reason that the State of California is in a financial bind. We have cut taxes repeatedly. The property tax has been cut by two-thirds. The income tax has been indexed to the extent that a reduction of almost 20 percent was put in within the last year. We abolished half the inheritance tax. We abolished the inventory tax. We have a variety of tax credits.

Our revenue base has been rather seriously reduced. We used to be the third State in taxes after New York and Alaska. We have now dropped to 25th. Every year there are going to be cutbacks in health, education, research, training, and transportation. The infrastructure, human and physical, of this State and this Nation is being systematically undermined. We are witnessing a policy of weakness, not strength, because of a myth and a propaganda campaign by narrow interests to enrich their own balance sheets at the expense of the Nation. They will wake up, hopefully sooner than later, to the fact that their own balance sheets depend upon the national balance sheet which can only be improved by training human beings.

Wealth comes from the human mind. The human mind is not being adequately inspired and trained and encouraged in this State or any other State. It is a scandal, it is a self-inflicted wound that is being covered up by the propaganda about redtape, bureaucracy, and the alleged problems of the Federal Government.

Accepting all those problems, the fact is that unless you train people, unless you inspire people, you are eating the seed corn of your next meal. That is true of the declining science teachers as well as it is true of the nurses.

I will just read you one thing from page 8 of my testimony which is so simple. It relates to nurses.

> At the Los Angeles County-USC Medical Center in East Los Angeles, 40 percent of the nursing positions are vacant. The unemployment rate for the same neighborhood is 14 percent. Yet the county cannot find trained licensed people to fill 40 percent of its nursing positions.

That is a scandal. In a sophisticated country like this, it does not make any sense. It can be changed by a commitment of dollars to a CWETA-type program. This can involve unions, it can involve management, it can involve taxpayers. The people have been told that their future will be paved with gold if the Federal, State, and local government are substantially reduced.

What people do not realize is that this country has been built by a partnership of Government and business, and if you start letting the roads be full of potholes, if the bridges are falling apart, if the ports aren't adequately improved and dredged, if the airports are not maintained, if the seaways are not protected, and if the poeple aren't trained, then you are impoverishing the country. Under the guise of economic recovery, we are being treated to a systematic weakening of the economy of this Nation. It ultimately comes down to the human beings.

So you asked me if the programs are there. In the State of California, the local governments are going to cut back. We are going to give less money, for example, to our teachers and our professors; therefore, we will have less of them. Therefore, within 2, 3, or 5 years someone will wake up and say, why is it that everything we have is made in other countries?

The reason is because they train their people. They invested in human capital. Now they have better tools than we do; therefore, they can make their products better and cheaper, even though they have to send them here from 3,000 or 5,000 miles away. At that point there will be recriminations. They will say, who did it? I will say, the people who did it were the people who falsely stigmatized manpower training, research, education, and the need to have a conscious industrial strategy.

At that point people will say, maybe that redtape wasn't redtape after all; maybe that was the safety net that was building a strong America.

I just hope we get there in 12 months or 24 months and not 5 years from now when it may be too late.

Mr. HAWKINS. Mr. Weiss?

Mr. WEISS. Thank you, Mr. Chairman.

Governor Brown, as you know, the Reagan administration has taken somewhat the same attitude that you have indicated they have taken in industrial and education matters as to affirmative action programs. The President campaigned, and his administration policies have in fact followed through, on the premise that if there is a need for affirmative action, that can best be done at the State and local level, that the Federal Government ought to be passing that responsibility on to the States. At the same time, of course, they are not necessarily funding those efforts.

I just wondered whether you would be in a position to comment as to what you see happening in the area of affirmative action, whether the States can, in fact, assume that responsibility, and what is your perspective on this?

Governor **Brown**. I would say the prognosis is reasonable within the State of California. We have a very strong affirmative action effort. I am proud of that.

What will pertain in other States I do not know. I can say this: Forty percent of the judges that I have appointed are women and minorities; half of my cabinet are women. That has never happened before anywhere in the State or anywhere on this planet. We have a continuing commitment to the employment of all people.

I believe that this whole matter of affirmative action is going to be a short-term problem. It is going to be a painful short-term problem, but I believe the inexorable demographic reality of America facing a labor shortage will force this Nation to employ the elderly, the disabled, minorities, and women. This is the new fact that did not exist 10 years ago.

America has a shortage of people. That is a fact. We cannot supply the people needed for the jobs that are opening. That is not to say we do not have a lot of people on the shelf—elderly people, disabled people, and minorities—but in order to compete and to modernize our industry to do the work that it is going to take to compete in the world, I believe we are going to have to train all the people that are now neglected.

Affirmative action, a luxury in the minds of some and a burden in the minds of others, is going to become an imperative part of our national program of revitalization. Therefore, I believe that the democratic philosophy, the progressive philosophy which now looks like a choice which will become an imperative as people realize that, when they leave somebody at a job below their level, they are cheating themselves, that we lose. And that is the way I would like to put this problem, not as giving someone a benefit they do not deserve, but by giving America a benefit, by making sure that everybody reaches the level that they possibly can.

We know that a lot of these entry provisions are nothing more than control mechanisms to restrict entry into a position. We have societies licensing, and we have tests that exclude people. We have to open up those jobs and let people in. I think we are going to let them in not because necessarily we are so generous, but because we need them. I think necessity is the mother of invention in this case.

I think we are on a strategic edge here whereby the notions of the 1960's and the 1970's that were only being assimilated into our political framework are now going to become the common wisdom of this decade, even though all the rhetoric is to the contrary. I never hesitate to stand up and speak the opposite of what everyone else is saying.

I will tell you, no matter how popular all this Republican rhetoric looks, I believe it is going to be rejected by the realities of the marketplace. I have talked to businessmen. Do they talk about taxes? No. Do you know what they talked about? They talked about schools. They said, we cannot get enough people.

I think what they are going to have to say is, what about these disabled people? They are in a wheelchair but they can still do this job. What about this fellow who is 75, I bet he could program a computer. What about this black teenager? I bet he could learn something.

All it takes is the front-end money, because that front-end money takes the national will, that is the only thing we lack. I think the national will is going to be generated by two things: By the framework laid by those who have worked in the vineyards for the last 20 years giving the theoretical framework, and then, second, by the realities catching up with us and realizing that affirmative action is a benefit to society, because we are propelling people forward.

If we know anything in society, we know, No. 1, that people respond to expectation, and whether it is a doctor who tells you you feel better and pretty soon you do, or a teacher who says you are smart and you are doing a good job, that is a major ingredient in the performance.

If you tell somebody, you are not very bright, you ought to go over here or stay back, they tend to do that, unless they are very exceptional. Expectation is a major ingredient in education and health. Right now when people try to have negative expectations, that is exactly what they get.

I believe people are going to come to the point that if you tell people you are ready for this job, even though you may not even think you are, then you move everyone up. The whole society is pulled up.

What I think is, we have had too much negativism, too much downgrading of people. I see affirmative action as a positive upward expectation on the part of those in control for those who are coming along and who have been excluded. I notice they often say that if an Asian or a black gets it, what about all these other people?

Well, I think that is just missing the point. The point is we want to make sure that people have an opportunity. We want more opportunities. We can have more opportunities if we follow the outlines that we have developed.

There is always a certain amount of tension, as the *Bakke* case indicated. But the *Bakke* case was rejected. We have affirmative action in our law schools and our medical schools and other places. I would like to break the monopoly even more. If we had an apprenticeship program with flexible licensing so you can be 18, 20, or maybe 45 in order to study for medicine, we should have a system whereby work and learning are interconnected.

We have a lock-step program that when you are 5 you go to kindergarten, when you are 18 you go to college or junior college.

That is a total anachronism. Learning is a lifelong effort. Whether you are 60 or 30, you should have the opportunity based on your own inclination to move in and out of jobs.

That flexibility means we have to change our pension systems, our licensing systems, our education systems, and our attitudes of business, and unions. When we put it in that large context, affirmative action is just one piece of a sophisticated manpower strategy that will come to terms with the electronic information revolution that is rendering cheap labor obsolete and many of the structures and subsidies of our society obsolete.

Instead of being fearful, I think we ought to be very confident and upbeat and recognize that minorities and the other excluded groups in society are our next resource, that they are our ace card in being able to have enough people to do the work so that we can compete in society.

That is why I keep getting back to the figure, in the year 2000, America will constitute 4 percent of the world's population. Now 4 percent of the people on this planet want to be on top, want to be the military leader, the economic leader, the morale leader, and the cultural leader. We cannot afford to squander tens of millions of our people because they are disabled, old, black, Asian, Hispanic, or whatever.

That no longer is an economic alternative, because as a matter of survival, as a minority in the world, we need affirmative action. We need job training. We need equal opportunity. We need the kind of programs that now are being discarded in the name of federalism, antiredtapeism, Republican insurgencism, or whatever the "isms" are I believe they are bankrupt and they rest on a bed of sand that is going to dissolve them well before this decade is out, and hopefully before 1982.

Mr. WEISS. Thank you.

Thank you, Mr. Chairman.

Mr. HAWKINS. Mr. Washington?

Mr. WASHINGTON. I have no questions, Mr. Chairman.

I think Mr. Weiss asked the $64 question and the governor very ably responded to it.

I think your message, Governor, was clear, correct, and it is powerful and quotable. All citizens, you say, should be brought up to the level of their talent. I assume you mean potential. I obviously and clearly subscribe to that. Obviously and clearly, the Reagan administration does not.

Let me just commend you, sir, and say that I think your voice on this subject is needed, and I hope you continue to speak loudly, clearly, and correctly and quotably on this subject of job training, on the subject of affirmative action, because your message is upbeat. But I do not think we should be beguiled into minimizing the opposition to the program you suggest of job training and the opposition to the proliferation and refinement of affirmative action which is just one tool, as you indicate, that was designed to bring out raising people up to the level of their talents.

Thank you for your statement, sir. You have made this a very fruitful day for me.

Governor BROWN. I would like to add one final point. That is, you ought to look very carefully at any government worker program to bring people in to do work when we have people already unemployed. The key challenge is training the people we have.

Where wages aren't adequate to attract Americans, those wages ought to be brought up by strong measures to insure the right to organize. That, to me, is the key. We can have high wages, we can have sophisticated technology, and we can compete in the world market. That is something that I do not think was understood before.

So this thing, the issue really comes down to, are we going to take care of America and its people or are we just going to forget about it?

I believe businessmen are going to be leading this effort if they can't get foreign workers. If they have to take American workers, then they are going to say, we want the best. The only way to get the best is through affirmative action, job training and good schooling starting in grammar school, high school, and the university.

Lo and behold, what do you see? You see the old Roosevelt coalition coming back because the workers want to have wages and jobs; the professors want to have research and opportunity; the doctors want to have their health care which is being cut back; the farmers want to be able to have their tools and their machinery and their technology.

What I see is that all the ingredients of the Roosevelt coalition are going to be put back together because that coalition developed in response for an attitude of neglect and an almost childlike faith in interpretations of Adam Smith. The same mistakes are being made today by the Republicans in Washington and the same consequences are going to follow if the Democrats would do their job.

Mr. HAWKINS. If the gentleman would yield, let me suggest this: In order to clarify the position with respect to the issues being raised, I would say that President Reagan would say almost the same thing, that he believes in training, that he believes in affirmative action, that he believes that the Voting Rights Act should be extended.

Let me suggest that the issue is not so much the broad statements that sound good, but whether or not the machinery will be available in order to insure that these objectives are going to be accomplished. While making the same statements that you have made, Governor, the President is not providing the machinery and is, as a matter of fact, dismantling machinery that will achieve the very objectives that he would deal with in terms of rhetoric.

So I think the question this committee is primarily concerned with as we see these programs being dismantled and the power to enforce order taken away from these programs and, in the case of the President turning over to the private sector to do the training and indicating that there are going to be so many jobs, that you do not have to worry about affirmative action. Everybody is going to get jobs if you vote for all of his programs. He believes in everybody's right to vote, but at the same time he is not giving to the Federal Government the right to enforce the Voting Rights Act. That seems to be the problem.

Now I would think that we should be a little bit more specific when we talk about EEO enforcement responsibility being turned over to the States. If the Equal Employment Opportunity Commission at the Federal level is going to be dismantled, will the State Fair Employment Practice Commissions be strengthened because you still are going to have people being discriminated against who have no place to file a complaint. So it seems to me we need to be a little bit more specific in terms of not only voicing support for these programs but also voicing support for funding them, providing them. We need to provide the agencies with the power either to issue cease and desist orders or to enforce their orders when they issued them. We need to strengthen the rights of plaintiffs who file lawsuits as well as the rights of those individuals who file complaints with the various agencies.

Could we at least get a response from you as to the future of the State laws in the event that the Federal Government unfortunately, through the President's program, abolishes the various programs that will uphold the objectives for which these laws were issued in the first place?

Governor **Brown**. The FEPC in California, which you had a great deal to do with, has been strengthened. After Proposition 13, we increased the personnel of that office. We have reorganized it. We have strengthened it.

I would say there will be no retreat in any way in the fair employment and practices commission in the State of California.

Mr. **Hawkins**. So if unfortunately the President's program survives and the emasculation takes place, at least in this State we can look to the State agency to do that which the Federal Government will not be doing because of the emasculation of the program; is that a fair statement?

Governor **Brown**. Our commission is in place. As long as the legislature remains with the present philosophy, then we are going to keep that agency very strong. That is a very strong commitment. It has been a top priority of mine.

Mr. **Hawkins**. Thank you.

Thank you, Mr. Washington.

Mr. **Washington**. I yield.

Mr. **Hawkins**. Mr. Peyser?

Mr. **Peyser**. Governor, I appreciate your being here this morning. It certainly gives us a feeling of the importance that you attach to this subject.

I think the questions that you have raised in outlining the administration's—the President's attitude toward a number of things, of a saying of support and then taking away and letting the public assume that everything is going well, I think you have stated very clearly.

I am going to interject a type of thing I think that also illustrates the President's approach where he appears to be saying one thing and then doing something else, and the American public, as yet, has not really caught on.

The President just a few weeks ago approved a sale with Secretary Block of nearly 200 million pounds of butter to basically the Soviet Union. That is where it is going. Everyone knows it is going to the Soviet Union. Yet we are talking about the neutron bomb, and how we are going to be tough with the Soviet Union.

I have just issued a statement in Washington this morning calling for that butter sale to be stopped and to be sent to Poland to give the Polish Government a chance to survive. If they do not survive, we are going to share part of the blame, but the President does not seem to react to these types of issues this way. It is talking tough on the one side and then giving in to the dollar sales on the other.

In the same vein, I would like to ask you something dealing with California: Yesterday we heard a statement from the director of personnel of the Lockheed Corp., a Mr. Kiddoo, who said that the California public school system was in shambles. He said the California public school system was failing in its job and he outlined step by step his whole procedure of how this failure was taking place.

Frankly, I hope that is not the case, and I would like to hear from you because this gets to the very heart of the matter you are talking about, which is the education of people, of young people, of training and development and, if the system in this great State is in the shambles that he depicts, I think the problem is even more compounded and I want to know what the State is doing about it.

Governor BROWN. I could not agree with that characterization. The school system in California has some very excellent components. It certainly has its share of problems, as would be found in any urban-industrial State. The fact of the matter is America is going through culture shock. The information revolution, the change in attitudes, in values, this hits the neighborhood, the family, and ultimately the schools.

There is a discontinuity between what children see on television, what they experience in the neighborhood, and the traditional curriculum.

The attempt to bring those factors together so as to motivate and train young people is not something that is done overnight. It is a continuing challenge. We are turning out excellent graduates while at the same time we are seeing some serious problems. The money is being cut back and we are going to have to do something about that. So I recognize that, but many of these business leaders are enjoying a tremendous windfall on their property taxes. In the absence of an inventory tax which they always had to pay, they are enjoying significant depreciation benefits as well as other tax concessions.

They now recognize that the problem in the schools is their problem as well as the teachers, the students, and the parents. That is going to be a part of this new consensus and shared vision that I believe is going to take hold not only in California but across the Nation. You cannot ask schoolteachers to sit in the classroom with kids that speak seven or eight different languages, that are not prepared for the kind of work that has to be done, and then kick them around all the time. The schools are a whipping boy.

The public services, from police to schools, to you name it, are being demoralized. At the same time we are cutting back their income on the theory this is going to liberate the private sector. But the private sector then comes around at Lockheed and says, we need people to work on our airplanes. Now we have to go to England to get them.

Why don't they go to Los Angeles, to the San Fernando Valley, or East Los Angeles. They do not recognize that this is their problem; it is our problem. I think it is very excellent that the personnel director of that corporation now is aware of this, but we must pair up schools with the businesses, we have to provide the continuity of training, and we have to provide adequate resources for those schools.

This perhaps gets to the difference between the Republican and Democratic view. The view that now prevails is that if you give tax cuts, the people at the top will invest it and it will trickle down to the masses. What happens if those people take the money and go to some Third World country where they can get cheap labor and bring in brand new means instead of having to deal with obsolete factories and means in this country. They then make their product, send it back, and do very nicely. In the Third World they get a guarantee against expropriation so they have nothing to worry about. That is a very serious risk.

What we have to do is have a conscious plan which includes manpower and training, affirmative action, Voting Rights Act, etc. We are human beings that have to make the decisions, not leave it all to the market.

The market is important, but it is not the only part of it. I would say that as long as the immigration laws remain what they are, these aerospace companies are going to have to get involved in education. More and more of them are. They are giving scholarships. They are working with the schools. They are taking interns. At some point they will have to say, what about the financing, what about the curriculum and how can we get involved?

The reason they are going to have to do that is that they cannot pirate workers from some other State. That is like cannibalizing the work force. They are going to have to expand the work force in effect by expanding the education and the training. We are not quite there yet, but we are trying this philosophy of cutting back, cutting back, and constantly cutting back.

At some point then the pendulum begins to swing back and you say, what are we getting for our cut? At that point people better say we are going to invest. It is just like a road or a house. You start getting holes in it, it deteriorates and falls apart. If your people are neglected, they are not able to contribute.

That is pretty much the direction that we are in now. So putting it charitably, the Reagan program is a correction to excesses that were generated out of the direction started in the sixties, but that collective process itself needs a correction. That is really the job I think of this committee and those who care about the problem.

Mr. **Peyser**. Well, I would congratulate you, Governor, on this. My hope would be that the business community such as you are outlining, not only here in California but everywhere throughout the country, recognizes their involvement at the elementary and secondary level as well as at the graduate level, because many of the schools are reaching in to pick out graduate students and helping them.

I applaud that. In the testimony yesterday on this particular issue, a gentleman said that the Federal Government ought to get out of this area—that they were swamping schools in regulations and that they should leave the school system alone. It is interesting to me to note that the Lockheed Corp. had come to the Federal

Government to get bailed out a few years ago. They had no hesitancy in getting the Government involved as long as they were helping Lockheed.

I think the same thing can be applied, and hopefully the pressure will be put on by people like yourself in your State and in other States to bring in the development and the improvement in this elementary and secondary education, because it is essential, and without it all these programs we are talking about are going to fall by the wayside if we do not have the young people ready to go with them.

Governor **Brown**. The Governors made a comment in Atlantic City that wasn't totally communicated. That was, they would be glad to assume the responsibility for education and take that over as a State and local responsibility, but the condition was the Federal Government assume AFDC, income maintenance, and medicaid. That was the statement that they made.

Fine. Leave education to the States, but take over welfare, SSI, and medicaid, which are the fastest-growing programs, even faster than education. I do not hear that as the response. So I believe you are going to find not only the business but the Governors also—so I think the business community will respond because they see it is in their interest. They are now coming to the State and what they are talking about now is what about your roads, what about your transportation, what about the housing? To have housing you have to have sewers, infrastructure, lighting. That becomes a public sector effort.

What is happening is that there is a blindness to the connection of public sector expenditure and private wealth. You cannot build a track of houses unless you have a sewer, street lights, schools, police, fire, and other services. That takes government. We have a property tax limit. So you cannot do that. If you cannot do that, you cannot build houses.

If you are lucky, you have to have people. To have people you have to have schools. I believe what is going to happen is a rediscovery of the role of the private sector and the public sector. Right now there is a feeling that we should leave it all to the private sector, that most of this will get done. I do not think that has ever happened in the past.

Whatever the excesses were that brought us to this position, it cannot be sustained because all those people know in their hearts that they need government and government, of course, needs private business.

We are going to get beyond the adversary into the partnership. That will bring up the whole question of taxation and where do we get the money?

So on the one hand, things are looking a bit negative in the short term, but I would say the fundamental conditions are for a rebirth of a strong public sector in cooperation with a vigorous private sector.

Some of those people now who are talking a lot on the conservative side are painting themselves into a corner that they are going to have a hard time getting out of.

Mr. **Peyser**. Thank you, Governor.

Thank you, Mr. Chairman.

Mr. **Hawkins**. Thank you, Governor. We know your time is limited. I think the length of the time we kept you is an indication of the value we attach to your statements.

Governor **Brown**. Thank you very much. I appreciate the opportunity of having been here.

Mr. **Hawkins**. Thank you.

The second witness before the committee today is Assemblywoman Maxine Waters, of the 48th Assembly District.

Mrs. Waters is certainly one of our distinguished State officials. It is very appropriate that she appear this morning in conjunction with the Governor. I am very proud from a personal point of view, because Assemblywoman Waters represents one of the assembly districts in my particular congressional district.

It is with a great deal of pride, Mrs. Waters, that we welcome you before the committee this morning. We look forward to your testimony, which we know will be a distinct contribution to the issues before this committee.

STATEMENT OF MAXINE WATERS, ASSEMBLYWOMAN, 48TH ASSEMBLY DISTRICT, STATE OF CALIFORNIA

Mrs. **Waters**. Thank you very much, Congressman Hawkins. It is indeed a great honor to have been asked to participate in this hearing. It is always a pleasure to share in the very difficult work that you are doing in Washington. I am very pleased that you are my Congressman.

I am here today to try to add in some way to the very difficult work that I know you must do.

To the members of this committee, Congressman Hawkins requested that I restrict my testimony to the issues of the economic and social basis of the affirmative action laws and the continuing necessity for these laws.

He also asked me to address the question of alternatives to affirmative action that will afford ethnic minorities and women equal access to employment opportunities. But before I speak to those issues, I would like to provide a view of affirmative action as perceived by people who are committed to civil rights.

Affirmative action is the process by which public and private employers take aggressive steps to correct and undo past discriminatory practices that have kept ethnic minorities and women out of the mainstream of American life, which is based on gainful employment.

The goal of affirmative action policies is not to force employers to hire incompetent or unqualified people. The goal is to motivate them to seek out, train, educate, and hire persons who are qualified and qualifiable in areas they have been denied access to because of discriminatory practices.

The economic and social basis and the need for affirmative action programs are the same today as when the Civil Rights Act of 1964 was enacted—job discrimination, economic inequities, bigotry, and social injustices.

It is true there are things that have improved for some ethnic minorities and women. The number of black elected officials has increased significantly; the number of ethnic minorities and women in top- and middle-level management positions in the private and public sectors has gone up dramatically; ethnic minorities and women are in positions today that were closed to them in 1964, and the incomes of women and ethnic minorities have edged up, but have not caught up with those of white males. These achievements are due primarily to the passage of the Civil Rights Act, especially to the title VII provisions, and the enforcement powers granted the Equal Employment Opportunity Commission.

But while we cannot say definitely what this society would be like had the act not been passed, we certainly can assume that this society would be far more depressed for ethnic minorities without it. The fact is that despite the achievements of many ethnic minorities and women in the area of professions, employment, and income, a large percentage of both segments make up a disproportionate percentage of this State and this Nation's poor.

And while we agree with Mr. Reagan that a flourishing economy holds the best hope for curing what ails black America, we also concur with black columnist William Raspberry's contention that free enterprise benefits are not automatic. The economy of the South was strong when King Cotton reigned, but few of the benefits flowed to blacks. And if things are markedly better for blacks and other ethnic minorities today, it is directly related to Government enforcement of affirmative action policy and the civil rights laws.

None of us who participated in the early fight for equal opportunities expected our job to be easy. None expected the successful passage of the 1964 Civil Rights Act to totally erase within a few years all the traces of segregation, discrimination, bigotry, and injustice that nearly 300 years of slaveowning, slavetrading, and free slave labor had embedded in our Nation's fabric.

But while none of us expected such a miracle, we did not dream that the civil rights gains made during the 1960's would be so seriously threatened in the short period of 17 years. The cause of civil rights and affirmative action faces most serious threat from the current administration's regulatory reform drive.

Reagan administration advisers have submitted to the President a report alleging that title VII of the 1964 Civil Rights Act has been improperly implemented and that equal employment enforcement efforts have created—so they say—a new racism in America.

In addition, Mr. Reagan's advisers have urged him to:

One, repeal Executive Order 12067, which placed the Equal Employment Opportunity Commission in the lead role of civil rights enforcement for the Federal sector;

Two, freeze the issuance of any new EEO guidelines and court suits for 1 year;

Three, disallow statistical data as proof of patterns of discrimination;

Four, disallow numbers of individuals of a particular racial or sexual identity as proof of a pattern of discrimination unless individuals can prove they were denied employment or advancement because of discrimination;

Five, allow test and biographical histories to be considered legitimate basis to consider employment but provide that employers are not obligated to seek out or hire any established percentage of workers from the groups; and

Six, provide that employers are innocent unless proven guilty of intent to discriminate. In essence, the advisers have recommended the gutting of affirmative action law.

It is the view of the Reagan administration that policies established to carry out affirmative action are not based in statutes and that they can be altered through Executive orders and administrative regulations.

The Justice Department already is in the process of reviewing affirmative action policies of many agencies, including the Labor, Education, State, and Transportation Departments, the Equal Employment Opportunity Commission, and the Legal Services Corporation.

The future of affirmative action hangs on the outcome of these deliberations and, considering the recommendations already made by administration advisers, I fear the outcome will be devastating for affirmative action.

Mr. Reagan's program for economic recovery includes drastic cutbacks on Government support of local government and social programs. As budgets are reduced for human services, thousands of jobs will be lost. Ethnic minorities and women will be pushed out of the public work force in inordinate numbers unless the administration can be diverted from its current position.

In Los Angeles County alone, more than 3,000 persons will be laid off during this fiscal year as a result of State and Federal cutbacks in health services and welfare programs. Despite the fact that blacks make up only 12.6 percent of the country's population, they will comprise nearly 42 percent of the layoffs because seniority dictates who will be forced to leave, and they were the last hired.

In 1978, prior to the passage of proposition 13, which brought about the loss of thousands of government-sector jobs, I introduced a bill aimed at softening the impact of proposition 13-related layoffs on ethnic minorities and women. The measure was an attempt to protect the employment gains made by ethnic minorities and women over the past years by requiring local government to consider, as a factor in making personnel reductions, the effect the layoffs would have on affirmative action programs.

I also proposed to the State legislative budget committee a method of determining layoffs so that women and minorities would not bear the brunt of a reduction in the work force.

My plan, which was presented to the two-house 1978–79 budget committee, proposed grouping employees by sex and ethnicity and ranking each group by seniority. The layoffs in each category would be based on the percentage represented by each group within the entire work force.

In other words, if women comprised 20 percent of the labor force, then 20 percent of the layoffs would be women and seniority would determine which women in this category would be dismissed. If white males represented 60 percent of the work force, then 60 percent of the total required to be laid off would come from this segment of the work force, and so on.

Like assembly bill 3532, which required that local government consider factors other than seniority in making staff reductions, my plan also was rejected by the legislature. And while AB 3532 and my layoff plan might not be the definitive answer to the severe effects of the administration's cutbacks, I vehemently protest doing nothing.

I say to Mr. Reagan and to this committee that there is no alternative to affirmative action and the need for such remedies except a nonracist society, and we have not arrived at that point yet.

As much as we espouse a philosophy of equality of opportunity, the economic reality is that this is not so. The inequality of our society is reflected in the fact that of the millions of Americans who live at or below the poverty level in the United States, 43 percent are black and only 10 percent are white.

I quote William T. Coleman, Jr., former Secretary of Transportation and chairman of the NAACP Legal Defense & Educational Fund, Inc.—who, by the way, is a Republican—wrote the following in a recent New York Times article:

> When practical realities reflect our egalitarian aspirations, then we will have a true tradition of equality. Until that day comes, however, we must take affirmative action to remedy past wrongs, to realize the human potential of black Americans and to transform egalitarian wishfulness into pragmatic experience.

Until that time, and especially during this period when the administration is attempting to achieve economic recovery by cutting back on Government support of local governments and social programs, ethnic minorities and poor people will suffer unduly without civil rights protection.

[The prepared testimony of Maxine Waters follows:]

PREPARED TESTIMONY OF ASSEMBLYWOMAN MAXINE WATERS, LOS ANGELES

Congressman Hawkins requested that I restrict my testimony to the issues of the economic and social basis of the affirmative actions laws and the continuing necessity for these laws. He also asked me to address the question of alternatives to affirmative action that will afford ethnic minorities and women equal access to employment opportunities.

But before I speak to those issues, I would like to provide a view of affirmative action as perceived by people who are committed to view to civil rights.

Affirmative action is the process by which public and private employers take aggressive steps to correct and undo past discriminatory practices that have kept ethnic minorities and women out of the mainstream of American life, which is based on gainful employment.

The goal of affirmative action policies is not to force employers to hire incompetent or unqualified people. The goal is to motivate them to seek out, train, educate and hire persons who are qualified and qualifiable in areas they have been denied access to because of discriminatory practices.

The economic and social basis and the need for affirmative action programs are the same today as when the Civil Rights Act of 1964 was enacted—job discrimination, economic inequities, bigotry and social injustices.

It is true there are things that have improved for some ethnic minorities and women. The number of black elected officials has increased significantly; the number of ethnic minorities and women in top- and middle-level management positions in the private and public sectors has gone up dramatically; ethnic minorities and women are in positions today that were closed to them in 1964, and the incomes of women and ethnic minorities have edged up—but have not caught up with those of white males. These achievements are due primarily to the passage of the Civil Rights Act, especially to the Title VII provisions, and the enforcement powers granted the Equal Employment Opportunity Commission.

But while we cannot say definitively what this society would be like had the Act not passed, we certainly can assume that this society would be far more depressed for ethnic minorities without it. The fact is that despite the achievements of many ethnic minorities and women in the area of professions, employment, and income, a large percentage of both segments make up a disproportionate percentage of this state and this nations's poor.

And while we agree with Mr. Reagan that a flourishing economy holds the best hope for curing what ails black America, we also concur with black columinst William Raspberry's contention that "free entreprise benefits are not automatic". The economy of the South was strong when King Cotton reigned, but few of the benefits flowed to blacks. And if things are markedly better for blacks and other ethnic minorities today, it is directly related to government enforcement of affirmative action policy and the civil rights laws.

None of us who participated in the early fight for equal opportunities expected our job to be easy. None expected the successful passage of the 1964 Civil Rights Act to totally erase within a few years all the traces of segregation, discrimination, bigotry and injustice that nearly 300 years of slavery and slave-owning, slave-trading and free slave labor had embedded in our nation's fabric.

But while none of us expected such a miracle, we did not dream that the civil rights gains made during the 1960's would be so seriously threatened in the short period of 17 years.

The cause of civil rights and affirmative action faces a most serious threat from the current Administration's regulatory reform drive.

Reagan Administration advisors have submitted to the President a report alleging that Title VII of the 1964 Civil Rights Act has been improperly implemented and that equal employment enforcement efforts have created a new racism in America.

In addition, Mr. Reagan's advisors have urged him to: (1) repeal Executive Order 12067, which placed the Equal Employment Opportunity Commission in the lead role of civil rights enforcement for the federal sector; (2) freeze the issuance of any new EEO guidelines and court suits for one year; (3) disallow statistical data as proof of patterns of discrimination; (4) disallow numbers of individuals of a particular racial or sexual identity as proof of a pattern of discrimination unless individuals can prove they were denied employment or advancement because of discrimination; (5) allow test and biographical histories to be considered legitimate basis to consider employment but provide that employers are not obligated to seek out or hire any established percentage of workers from the groups; and (6) provide that employers are innocent unless proven guilty of intent to discriminate. In essence, the advisors have recommended the gutting of the affirmative action law.

It is the view of the Reagan Administration that policies established to carry out affirmative action are not based in statutes and that they can be altered through executive orders and administrative regulations.

The Justice Department already is in the process of reviewing affirmative action policies of many agencies, including the Labor, Education, State and Transportation Departments, the Equal Employment Opportunity Commission and the Legal Services Corporation.

The future of affirmative action hangs on the outcome of these deliberations and considering the recommendations already made by Administration advisors, I fear the outcome will be devastating for affirmative action.

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CALIFORNIA LEGISLATURE—1977-78 REGULAR SESSION—ASSEMBLY BILL NO. 3532

Introduced by Assemblymen Maxine Waters, Agnos, Alatorre, Brown, Miller, Torres, and Tucker—Coauthor: Senator Greene.

An act to add Chapter 4.5 (commencing with Section 53975) to Part 1 of Division 2 of Title 5 of the Government Code, relating to governmental employees.

Legislative counsel's digest

AB 3532, as amended, M. Waters (P.E. & Ret.). Cities: counties: districts: personnel.

Existing law does not prescribe any uniform requirement to be followed when the employees of a city, county, or district are affected by staff reductions or reassignments.

This bill would require each city, county, school district, community college district, and special district to take job performance, job necessity, seniority, and the effect on affirmative action programs into account when making staff reductions or reassignments.

This bill would specify that it does not make an appropriation or provide for reimbursement under Section 2231 of the Revenue and Taxation Code.

This bill would only become operative if Proposition 13 is adopted at the 1978 direct primary election.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 4.5 (commencing with Section 53975) is added to Part 1 of Division 2 of Title 5 of the Government Code, to read:

Chapter 4.5. Personnel Affairs

53975. Each city, city and county, and county, whether general law or chartered; and each school district, community college district, and other special district shall, in making staff reductions or reassignments, take into account the following factors:

(a) Job performance.

(b) Job necessity.

(c) Seniority.

(d) Effect upon affirmative action programs.

SEC. 2. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be an appropriation made by this act.

SEC. 3. Sections 1 and 2 of this act shall only become operative if Proposition 13 is adopted by the electors at the 1978 direct primary election, and, in such case, shall become operative upon the effective date of this act.

AB 3532 (MAXINE WATERS) AS AMENDED MAY 25, 1978

Subject

Local government employees: layoff criteria; SB 90 Waiver

What the bill does

Provides that local agencies shall take into account job performance, job necessity, seniority, and effect upon affirmative action programs when making staff reductions or reassignments.

Waives state reimbursement of any potential SB 90 costs.

Background

Current law is generally silent on the issue of handling staff reductions or reassignments by local agencies. There are no statewide standards at present.

Seniority is a very common method for determining layoffs, or demotions in lieu of layoff. The seniority principle is often established in management-employee agreements or memoranda of understanding. To this extent, AB 3532 may conflict with these contractual provisions, which raises the constitutional issue of impairment of contract pursuant to Article I, Section 10(1) of the U.S. Constitution.

Job performance and job necessity are categories that are traditionally the province of local agency judgment, AB 3532 codifies this.

Affirmative action policies are currently covered under Sections 50084 and 50085.5 of the Government Code. The former requires local agencies to conform to the Federal Civil Rights Act of 1964 (Chapter 915, Statutes of 1972). The latter requires agencies to provide the State Fair Employment Practice Commission a copy of local affirmative action plans (Chapter 1395, Statutes of 1974). Current law focuses on hiring and promotion; AB 3532 addresses layoff and reassignment, and brings these two actions into parity with current law.

Fiscal

There are no identified SB 90 costs associated with this bill. The bill does not establish specific procedures, it simply provides that local agencies take these factors into account in the course of their decision-making process.

Under SB 90 (Gregorio) of 1977, local agencies may file claims with the State Board of Control for any costs incurred pursuant to legislation which mandates local programs or increased levels in local service, even if that legislation "waived" state reimbursement of potential costs. The Board of Control will forward all approved claims to the Legislature for inclusion in an annual Local Government Claims Bill; action on such bill is at the discretion of the Legislature.

PROPOSED SYSTEM FOR LAY-OFFS UTILIZING SENIORITY AND AFFIRMATIVE ACTION CRITERIA

The following plan is a proposed system by which lay-offs can be made, utilizing both Seniority and Affirmative Action Criteria.

This system is designed to minimize the negative effect of Proposition 13 on Affirmative Action Programs. If this system is used it will help to maintain the same proportion of minorities, women and handicapped.

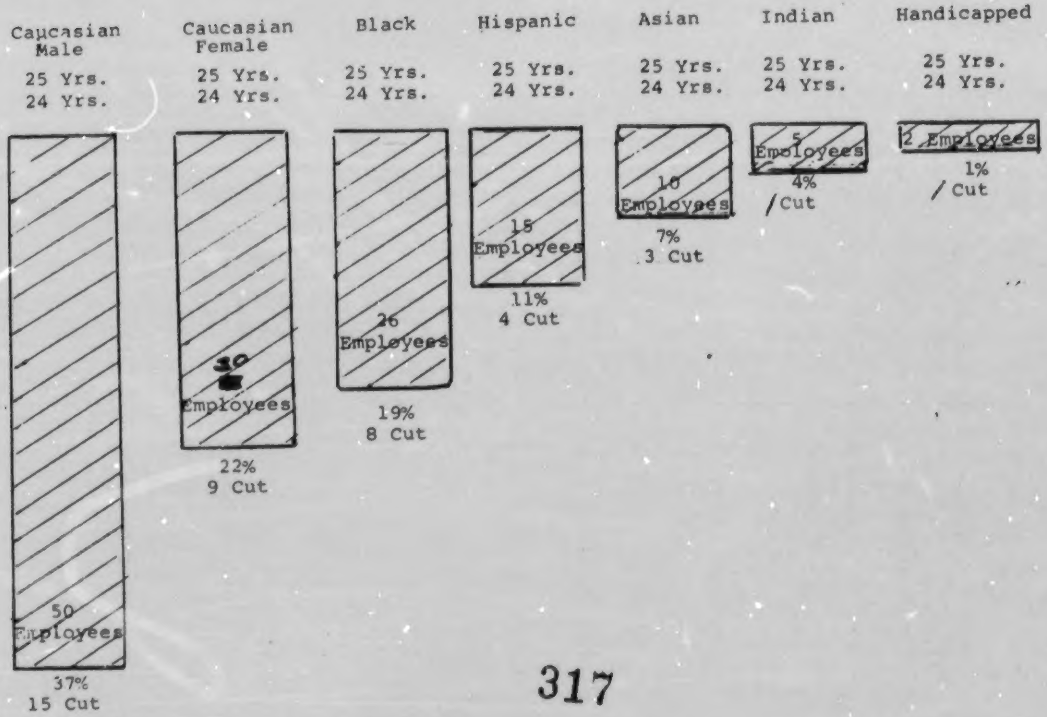
I. Divide the Work Force into seven categories: (1) Male, (2) Female, (3) Blacks, (4) Hispanic, (5) Asian, (6) Indian, and (7) Handicapped.

II. Rank each Category based on Seniority.

III. Establish the percentage of each Category in the Work Force.

IV. Apply the percentage of the Work Force of each Category as a reduction factor.

EXAMPLE Total 137 30% layof - 41 Employees



ASSEMBLYWOMAN WATERS' LAYOFF PROPOSAL

Under the Waters proposal—which was presented to the conference committee on S.B. 154—the use of seniority in layoffs would continue to be an important factor. The Waters plan, however, introduces a new method of determining layoffs so that women and minorities do not bear the entire burden of a reduction in the work force. With seniority as the only criteria, these segments of the labor force would most certainly be hit the hardest.

The plan suggests grouping the employees by sex and ethnicity, and ranking each group by seniority. The layoffs in each category would be based on the percentage represented by each within the entire work force.

In other words, if women comprised 20 percent of the labor force—then 20 percent of the total layoffs would be women. Seniority would determine which women in this category would be dismissed. If white males represented 60 percent of the work force—then 60 percent of the total required to be laid off would come from this segment of the work force—and so on.

The goal of this method of determining layoffs is to insure that the composition of the work force remains the same following a forced personnel reduction. As has been pointed out by several county affirmative action offices, the current strict seniority system of layoffs is disastrous for women and minority employees.

The attached pages provide a written and graphic illustration of how the Waters proposal would be implemented.

ASSEMBLYWOMAN MAXINE WATERS' LAYOFF PROPOSAL

Step No. 1—Divide work force into categories based on sex and ethnicity (e.g., caucasian male, caucasian female, black male, black female, etc.).

Step No. 2—Figure percentage of each group in comparison to the total work force (e.g., 25 Hispanic females in a 500 employee agency represent 5 percent of the work force).

Step No. 3—When that percentage is determined, apply it to the total number targeted for layoff (e.g., if Hispanic women comprise 5 percent of the work force and 100 employees must be dismissed—5 of the 100 employees facing layoff would be Hispanic women because 5 percent of 100 = 5).

Step No. 4—After determining how many employees in each category are to be laid off, seniority determines which individuals in each group will be released (e.g., the 5 Hispanic females with the least seniority would be laid off).

By using seniority as the determining factor within each category rather than across the board, women and minorities will at least maintain their current numbers in the labor force and ten years worth of affirmative action gains can be salvaged.

WATERS PLAN ILLUSTRATION—HYPOTHETICAL AGENCY—500 EMPLOYEES—REQUIRED LAYOFF 100 EMPLOYEES

Caucasian male [1]	Caucasian female [1]	Black male [1]	Black female [1]	Hispanic male [1]	Hispanic female [1]	Asian male [1]	Asian female [1]	Indian male [1]	Indian female [1]
25	20	18	15	13	12	11	10	10	10
24	19	17	14	12	11	10	9	9	9
23	18	16	13	11	10	9	8	8	8
22	17	15	12	10	9	8	7	7	7
21	16	14	11	9	8	7	6	6	6
20	15	13	10	8	7	6	5	5	5
19	14	12	9	7	6	5	4	4	4
18	13	11	8	6	5	4	3	3	3
17	12	10	7	5	4	3	2	2	2
16	11	9	6	4	3	2	1	1	1
[2] 200	[2] 100	[2] 50	[2] 25	[2] 25	[2] 25	[2] 25	[2] 25	[2] 15	[2] 10
[3] 40	[3] 20	[3] 10	[3] 5	[3] 5	[3] 5	[3] 5	[3] 5	[3] 3	[3] 2
[4] 40	[4] 20	[4] 10	[4] 5	[4] 5	[4] 5	[4] 5	[4] 5	[4] 3	[4] 2
Layoff accomplished and percentage of each category within total work force is unchanged									
[2] 160	[2] 80	[2] 40	[2] 20	[2] 20	[2] 20	[2] 20	[2] 20	[2] 12	[2] 8
[3] 40	[3] 20	[3] 10	[3] 5	[3] 5	[3] 5	[3] 5	[3] 5	[3] 3	[3] 2

[1] Years seniority

[2] Total in each category

[3] Percentage of total work force

[4] Total number laid off from each category

Total number of employees following layoff—400.

Result: Layoffs in each category are based on seniority, and the composition of the work force remains the same following mandatory reduction.

Mr. **Hawkins**. Thank you, Mrs. Waters. I do see you have the text of the bills referred to in the document as submitted. Without objection the entire document has been entered in the record.

May I commend you on what I consider to be a very excellent statement, which I think goes to the very heart of the problem.

This committee has frequently heard the argument that affirmative action is somewhat related to middle-class values and that it does not benefit the poor and the economically disadvantaged of this country. Do you believe this criticism to be valid?

Mrs. **Waters**. Absolutely not, Mr. Chairman.

As I stated in my testimony, I doubt very seriously whether the gains that have been made by women and minorities could have been made without affirmative action programs, the Civil Rights Act, and title VII in particular.

I believe, as I do believe a number of people believe, that without that kind of action by the Government we should not have achieved any of the small gains that have been achieved in this society. I absolutely believe that, unless we have strong affirmative action programs and enforcement of these programs, we will see a terrific erosion of the gains that have been made already. It will lead us to a situation worse than the one that we experienced prior to the passage of these laws.

Mr. **Hawkins**. I notice just briefly the text of AB 3532 and also the description of it in your prepared statement. Realizing as I do at the State level the length of time that it takes to get a good idea adopted, having thought back the long steps it took to get a Fair Employment Practice Act, the Fair Housing Act, I would like to commend you on at least the creative idea you have expressed in terms of handling layoffs, for example, and the specific steps you have taken.

I hope that you will not become discouraged because of the unsuccessful attempts thus far. I think the idea is something which we should consider. I think that it is a creative idea that this committee can in some way attempt to deal with. Perhaps in some way we can include it in some of the legislation which we will be handling.

I wish to commend you for that very novel idea and to encourage you not to become discouraged.

Mrs. **Waters**. Thank you very much.

Mr. **Hawkins**. Not that you ever will.

Mr. Weiss.

Mr. **Weiss**. Thank you very much, Mr. Chairman.

First, Assemblywoman Waters, let me express my appreciation to you for a very strong, clear, and eloquent statement.

I would like to ask, given the very clearly stated intention of the Reagan administration both by their campaign statements and the administrative steps they have taken up to this point, and recognizing the very strong commitment of the California State government, both the legislative and executive branches, what do you think the impact will be on a State such as California and on the minorities and women in California of the message being sent by the Federal Government and its proposals?

Mrs. **Waters**. Well, I have been talking with an awful lot of people, not only in my district but around the State, particularly in minority communiites and in the organized women's communities.

No. 1, there is a lot of fear that exists in California today in these communities about what the future holds when it appears it has been made very clear that this administration has no commitment to addressing the needs of women and of the poor and minorities, and have made it quite evident by their very direct actions in relation to affirmative action and their policy as it relates to cutbacks in Government service. There is a lot of fear. There is some anger developing in the overall community.

I believe we are headed for a direct confrontation of some type based on the very overt, direct actions of this administration.

I notice that a similar question was asked—framed a little differently—to the Governor when he sat here, by someone on this committee, I cannot remember who.

The Governor indicated that he, of course, could not forecast what possibly could happen in California and in some of the distressed communities. I think I have a signal of what possibly could happen.

We have been involved here in Los Angeles County in a fight to try to retain certain health services that were dramatically and drastically cut back by LA County government. In that, a movement was started and people began to come together to petition their Government.

That movement has realized some 800 or 900 people at LA County Hall of Administration every Tuesday for the past 4 weeks. I did not see it necessarily in terms of any potential outward acts of civil disobedience, et cetera, but obviously the Justice Department did, because I was visited by the Justice Department, by someone allegedly from community relations, who wanted very much to get involved in the situation.

Mr. **Weiss**. Is this State justice or Federal justice?

Mrs. **Waters**. The Federal Justice Department out of San Francisco who made some attempt to try to get my support or involvement in some way to help us out. I advised him we did not really need the help.

I took seriously any acts to limit the privacy rights of individuals who attempted to petition their Government or any acts of spying on me or any acts of the persons who were involved in this movement, and I would certainly request, under the Freedom of Information Act, any documents that had been filed and would share the information that the Justice Department is attempting to intervene in some way everywhere that you went.

So with that promise, I am sharing that with you today.

Obviously there is a feeling somewhere, and possibly within the administration, that there is something on the horizon in the way of confrontations. I do not see them spending their time attempting to interject themselves into what I consider is a very peaceful act on behalf of citizens to petition their Government. So if that is any sign of what the administration thinks may be happening, then I submit that to you.

Mr. WEISS. In the area of affirmative action, what is your view as to the capacity of the State government to fill the gap of shifting the burden, if you will, by the Federal Government to the State and local governments?

Mrs. WATERS. First of all, because layoffs will occur as a result of reduced revenues, not only at the State level but now at the national level with the 25-percent cutback in the so-called block grants that will be given to the State, that automatically means people will be laid off.

In layoff procedures, seniority has been the only criteria that has been used; so it is very difficult to protect affirmative action action unless we begin to develop new kinds of policies, or we simply have jobs for people. So affirmative action will be hurt significantly because the dollars will not be available.

If, in fact, the State government had the dollars to make up for the jobs that would be lost, I think the affirmative action question would not be there. It would be significantly less, because we do have a good program in State government, it could be better but it certainly is a good one in California. But the problem with the affirmative action is the fact that we are going to have to have so many layoffs, and all of those persons who have realized jobs because of affirmative action in the past 10 or 15 years who were the last hired are going to be the first fired. So affirmative action will be effectively dismantled.

What State government can do about that, I have no idea except to try and institute policies where the impact will not be felt by any one sector or any one section of our society. This, of course, getting this kind of legislation through is extremely difficult.

I can understand the concerns that organized labor even would have with tampering with strictly seniority criteria that they have established for so many years. I can understand the kind of fierce lobbying that would come from different constituency groups.

So in the absence of having the money and the jobs available, affirmative action is going to be hurt very seriously.

Mr. WEISS. Thank you very much.

Thank you, Mr. Chairman.

Mr. HAWKINS. Thank you.

Mr. Washington.

Mr. WASHINGTON. Thank you very much for wonderful testimony.

Would you do me a favor and extend my best wishes to Speaker Willie Brown? I would not dare come to his State without letting him know I am here. I should have gotten permission in advance.

Mr. HAWKINS. From the sheriff, too?

Mr. WASHINGTON. Opponents of affirmative action have been promoting a certain point of view in asking you to join them in fighting this necessary and worthwhile tool. Thomas Sowell, a well-known economist, has taken the position that affirmative action stigmatizes blacks and minorities who are the recipients of that method. What would be your response to that?

Mrs. WATERS. I would like to tell you exactly my immediate response to that, but it may not be appropriate before this distinguished committee.

Mr. WASHINGTON. We would like a colorful record.

Mrs. **Waters**. However, I will share with you that I suspect very seriously that that is a political statement based on the fact that Mr. Sowell was in support of Mr. Reagan and campaigned for him and is a part of that small number of blacks who have been identified to be spokespersons as it relates to black issues by the administration.

I do not take that statement seriously at all. Certainly a reasonable human being, black or white, would agree first of all that there has been discrimination in this country and, because of discrimination, certain persons—blacks, women, minorities—have not been allowed to enter and participate in the job market to the degree that white males, for example, have been able to participate. And because of that, there is a lot of catching up to do.

I think if you look at the labor market you will have prima facie evidence of discrimination based on just the numbers of who participate in it and what jobs. For that reason, I would submit to you that Mr. Sowell is completely unreasonable in his statements and that unless there are some affirmative actions taken to correct that, then certainly there will never be equal participation in the overall labor force.

So I may just conclude by saying I do not take seriously his comments. I consider them more political than anything else, and if in fact affirmative action is dismantled, we will not have any more gains; as a matter of fact, they will erode significantly.

If we take a look at what has happened in the past, even with Mr. Reagan's proposed economic recovery, where he talks about the private sector employing minorities and women, we know what has happened traditionally. It was the public sector that came to the aid of minorities and women. Minorities and women were able to get jobs that the private sector absolutely would not allow them to have. It is because of the public sector and Government and the enforcement of the laws and opening up of job opportunities that we have been able to participate somewhat, I submit to you, because the private sector's record is so bad that it will not get any better unless Government enforces actions and policies that have been undertaken to correct the situation.

Mr. **Washington**. Would it be fair to say in conclusion that affirmative action is not only designed to redress past grievances and wrongs, but ongoing current grievances and wrongs as well?

Mrs. **Waters**. Absolutely. We have found despite the fact that we have had affirmative action laws and had attempts to enforce them, people became very creative in ways to get around them. We get into discussions and disagreements about how, for example, a minority woman is counted in the job markets. There are attempts to sometimes count minority women as, No. 1, a woman and second, as a black to satisfy affirmative action requirements.

There are other kinds of creative attempts by those who do not wish to comply to get around employing the largest number possible of women and minorities in the job force. We certainly need enforcements for continuing efforts. Without them, certainly they would not do it.

Mr. **Washington**. Thank you.

Mrs. **Waters**. You are welcome.

Mr. **Hawkins**. Mr. Peyser.

Mr. **Peyser**. Mr. Chairman, thank you.

I really want to thank you for some very forceful and very direct testimony that is really the whole purpose of these hearings. You have fulfilled that obligation as a witness very well for us.

One statement in your testimony—and I am not questioning it, but it says: "The number of black elected officials has increased significantly. The number of ethnic minorities and women and so forth have increased significantly."

I obviously am very supportive of that. I wish the same were true in the Congress of the United States, because that certainly is not the case. There has not been any significant increase whatsoever. In fact, in some areas there has been a decrease.

At present in the administration itself, while we have strongly applauded the appointment by the President of a woman to the Supreme Court, there have been few other appointments of minorities and women in the top levels of this administration. So I guess I would like to maybe have you clarify a little that particular section for me.

Mrs. **Waters**. Absolutely.

I agree with you that certainly the appointment and employment record is dismal in this administration. The number of black elected officials that I referred to, looking back over the past 17 years, certainly there has been an increase, but certainly not enough.

In an attempt to not be totally dismal in my testimony before you today, and related to the 17-year period, there has been an increase in black elected officials, but not nearly enough. The number of ethnic minorities and women in top and middle-level management positions in the private and public sector certainly has increased in the past 17 years, but certainly not enough. I appreciate your pointing that factor out, because I definitely agree with you.

While I recognize that there have been some gains, they are certainly not enough.

Mr. **Peyser**. Thank you very much.

Thank you, Mr. Chairman.

Mr. **Hawkins**. Mrs. Waters, in response to the first question Mr. Weiss asked you as to whether or not a discussion of what may be the impact of the budget cuts in relation to social disorders, I think that question has come up twice this morning. We have dealt with it in a very gingerly sort of way.

I am reminded somewhat of a discussion I had the other day about statements made by Vice President Bush before the Governors Conference in Atlantic City, in which he said that any criticism of the President's program threatens the national interest.

There seems to be a systematic attempt not only to do the dirty work but to prevent individuals from even discussing what may be the impact of depriving individuals of the right to complain about discrimination, of any solution to the unemployment program, and of any attempt to redress the fact that they are being denied training programs or adequate business education.

There seems to be the fear that by even conducting hearings such as we are conducting around the country in the attempt to point out the consequences of the cutbacks and the very regressive taxation system, and spending all of our money on military weapons rather than on other things that are more productive, that in some way this may actually promote disorders and you cannot even dispute.

I think the record will show that this subcommittee is attempting to deal with the problems in a constructive, legitimate way. The people who are actually making the cuts and who are abolishing the programs that have proved very successful are to be blamed for any consequences of their acts. We are here to discuss programs as an alternative to other types of conduct. I hope that that point will be stressed as we go through these hearings. As public officials, this is not the time to keep our mouths shut as to what may actually happen.

Human endurance has its limits, and individuals are going to act as human beings if we try to treat them like animals. I would hope when these questions do come up. I am not in any way suggesting that you took the lower road. I think you responded quite correctly. The consequences of what is happening today, which will be felt after October 1 and for the next year, are going to be extreme, and we had better begin openly criticizing and doing something about it.

For the record, I would like at this point to indicate that we are not promoting any unrest or any disorders. We are thoroughly committed to trying to prevent them. I hope that we are not too late in doing so.

I want to commend you on what you are doing.

Mrs. **Waters**. Thank you very much.

I agree with you, Congressman. As I have indicated, there is a lot of fear and frustration and rising anger out there in the overall community. Efforts such as you are doing here today, and my efforts before the board of supervisors regarding the health care cutback, is an attempt to help voice that frustration and that fear and communicate additionally that there is potential trouble out there.

I think when you stop holding these kinds of public hearings and I stop talking about the issues is when people had better become very afraid about what could happen out there.

I think this hearing and other actions such as this allows the dissemination of information and the kinds of discussions that at least says to those people out there, there are those who are attempting to understand and address the problem and do something about it. When these voices are no longer heard, then I think we are in serious trouble.

Mr. **Hawkins**. Thank you very much.

Mr. **Weiss** [presiding]. Our next witnesses are a panel consisting of Joel Contreras and Prof. Reginald Alleyene. Please proceed. We will take your statement and enter it into the record in its entirety. You can summarize it, highlight it, or present it in its entirety.

STATEMENT OF JOEL CONTRERAS, ESQ., CHIEF COUNSEL, CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT

Mr. **Contreras**. I would like to thank you and express the views that we have developed regarding whether affirmative action constitutes unlawful reverse discrimination which is or should be prohibited by the Constitution.

I would like to indicate to the members of the subcommittee that our role as counsel to the Department of Employment Development, State of California, is very similar to that of most attorneys, that is, to advise our clients as to the law regarding items that come before our department. Certainly affirmative action has been for sometime and continues to be a factor with which we deal both as an employer and as a department that must render services to members of the public.

I would like to point out that it is certainly our best professional judgment that affirmative action has a legitimate basis and has passed under the closest scrutiny by the courts to serve us as a guideline for its constitutional basis.

I might add that we have on the Supreme Court what is generally recognized as probably the most conservative Court in the last 100 years. Yet, we look at the Court decisions that has come down affecting affirmative action and employment and we have a string of decisions that uphold the use of affirmative action when discrimination has been proven.

In addition to that, we have court decisions which hold that even without findings of discrimination, affirmative action may be properly considered. I think this is the most critical area, because affirmative action, certainly as a remedial tool, has passed the scrutiny of the courts.

However, affirmative action developed through Executive Order 11246 in response to the hope that the benefits from Federal contracts were such that the private sector, as well as the public sector, might well be able to say: A responsibility by you as a Federal contractor or subcontractor, should be to provide for equal opportunity and affirmative action. Therefore, that was not predicated on a finding of discrimination.

In other words, if certain situations develop—under-representation of minorities, females, and other groups—then the contractors would obligate themselves to do something about the problem. There wasn't a necessity to go to court. There wasn't a necessity to prove intentional discrimination. This was viewed as an alternative to a system which already existed under title VII of the Civil Rights Act of 1964. If you found discrimination, to get a determination and ultimately go to court and to seek some sort of relief.

That type of affirmative action is provided for and already exists. Therefore, you look at affirmative action as a separate means of addressing a problem: How we provide some relief for the problems which are associated with the under-representation of minorities and females?

In looking at the cases that dealt with this concept, the United States Supreme Court dealt with the case of the *University of California Regents* v. *Bakke*. In that case, the Court looked at three possible bases for striking down the affirmative action program at the University of California at Davis:

No. 1, they looked at title VII, title VI, and the 14th amendment. They did not address the title VII issue. That was addressed later in *Weber*. They did address the title VI and the 14th amendment standards. Only Justice Powell would have struck the program down as violative of both the 14th amendment and title VI. Therefore, we look to the majority of the Court as holding that affirmative action is constitutional under the 14th amendment.

In the *Weber* case, we had a situation where there was a voluntary affirmative action program for training. We had a facility that could not find experienced tool and diemakers. Therefore, they decided to have a training program. Through negotiations with the Federal Government, they developed a training program that would assure participation by both minorities and females, although this is not generally recognized by most people.

The Supreme Court, in reviewing that plan, held that title VII did not prohibit this type of affirmative action. Therefore, we believe that affirmative action has passed the most stringent legal review possible and has been upheld by the courts.

We do have a continuing debate. We realize this is proper. As stated by Justice Oliver Wendell Holmes:

> The ultimate good desired is that the truth be reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all of life is an experiment.

I would like to address some of the arguments that critics have raised. Certainly there is a legal debate. Critics charge that two wrongs do not make a right and that the 14th amendment should be used to prohibit the use of affirmative action. On that basis, it should be held unconstitutional. I could not agree more that two wrongs do not make a right. However, my perspective leads me to the conclusion that the two wrongs which should be addressed are: one, the past discrimination that has gone on in this country; and No. 2, the fact that those who would benefit from that prior discrimination should not be allowed to continue to benefit. Those beneficiaries are the proponents of the status quo. They should not be allowed to profit further by using the 14th amendment or any other legal basis to continue exercising their advantages.

I would also like to note that there are two interesting results of the legalities with which we have been dealing. These are two areas in which minorities generally have achieved population parity. One of those is the prisons. The other is in the military. I have often had an opportunity to sit in court in anticipation of litigating employment discrimination suits and watch the sentencing that goes on. The sentencing is indisputably and overwhelmingly minority. To me there is no doubt there is an overwhelming correlation between underemployment and unlawful activities, because when people do not have an opportunity to succeed in the system, they have only one alternative. That is to operate from without the system.

I think that the recent events this summer in England have certainly reawakened memories of what this country went through in the 1960's in Watts, Detroit, and other cities. We developed affirmative action programs and equal employment opportunity laws to address those very problems. To a large extent, we have made progress.

Those who would turn back advances made under the legal system and seek to undo what has been done, I think can certainly find legal support. We have had a period—during the Reconstruction years—when the 14th Amendment—was used to thwart civil rights, but I think that hope fully we will not be committed to repeating the mistakes of the past.

Thank you.

[The prepared statement of Joel Contreras follows:]

Prepared Statement of Joel G. Contreras, Chief Counsel, Employment Development Department, Health and Welfare Agency, State of California

I wish to extend my appreciation by the Chairman and members of the Subcommittee on Employment Opportunities for this opportunity to comment on one of the most significant issues in employment for all Americans—affirmative action. In particular, I would like to address my remarks to the question whether affirmative action constitutes unlawful reverse discrimination which is or should be prohibited by the Constitution.

I would like to preface my testimony by outlining the perspective from which I approach this issue. As the largest department in the State of California, with over 15,000 employees throughout the entire state, the Director, other managers and employees of the department look to our legal office to respond to many legal issues involved in public administration today. The role we occupy is replicated in many other public entities as well as the privte sector, it is typically referred to as "house" counsel. Although the staff attorneys in our department are employed by the State of California, it is our responsibility as attorneys and public officials to perform our duties in a professional manner. This means the consultation and advice to our clients is predicated on the facts and law based on our best independent judgment as attorneys.

In the performance of our duties when an issue such as affirmative action is presented to the Employment Development Department it would be the responsibility for our office to review the legislation for applicable authority and legal requirements set forth in the legislation and implementing regulations.

The promulgation of Executive Order 11246, 30 Federal Register 12319, and Titles VII, the Civil Rights act of 1964, 42 U.S.C. 2000(e), et seq., in 1964 provided the legal basis for affirmative action.

The primary impact of Executive Order 11246 was to prohibit federal contractors from discriminating on prohibited basis of race, color, religion, sex, and national origin. It enabled federal contractors to provide for affirmative action efforts without findings of discrimination. Under Title VII, as amended in 1972, public and private employers may be required by the courts to provide for affirmative action as relief pursuant to determinations of discrimination. Under Title VI of the Civil Rights Act pf ;074. 42 U.S.C. Section 2000(d), services to persons in the United States could not be denied, excluded or subjected to discrimination in programs and activities receiving federal financial assistance.

The United States Department of Health, Education, and Welfare issued implementing regulations for Title VI by holding recipients of federal financial assistance:

" . . . may properly give special consideration to race, color, and national origin to make the benefits of this program more widely available." 38 Fed. Reg. 17979, July 9, 1973, 45 CFR 80.5(j)

There can be no question that Congress, in enacting Title VII of the Civil Rights Act of 1964, and in amending it in 1972, recognized the existence of the Executive Order program, in effect ratified it, and did not limit it except in a few clearly defined instances.

(A) CONGRESS RATIFIED THE EXECUTIVE ORDER PROGRAM IN 1964

Congressional recognition of the Executive Order program, and its intent to maintain the Order's status as independent of Title VII, is evident in the "Interpretative Memorandum of Title VII of H.R. 7152 Submitted Jointly by Senator Joseph S. Clark and Senator Clifford P. Case, Floor Managers." This Memorandum, which was published in the Congressional Record, explained the intent and coverage of Title VII, including its impact upon Executive Order 10925 (the Predecessor of Executive Order 11246) 110 Cong. Rec. 7212-7215. Under the heading "Presidential Authority," the Memorandum stated, in pertinent part, that:

"The President's Committee on Equal Employment Opportunity was created by Executive Order 10925 . . . It presently supervises the administration of an equal employment opportunity program with respect to employment . . . by contractors and subcontractors on contracts with the Federal Government, and by contractors and subcontractors on construction financed with Federal financial assistance. *TItle VII, in its present form, has not effect on the responsibilities of the committee or the* *authority possessed by the President or Federal agencies under existing law to deal with racial discrimination in the areas of Federal Government employment and Federal contracts.*" (Emphasis supplied). 110 Cong. Rec. 7215.

Although some changes were made in Title VII after the Interpretative Memorandum was placed into the Congressional Record, there is no indication in the debates on those changes of any intent by Congress to alter the Senators' statement that Title VII has no effect on the President's authority under Executive Order 10925 to "deal with racial discrimination in the area of . . . Federal contracts."

Further evidence of Congress' recognition and acceptance of the Executive Order program is shown by the fact that Title VII, as originally enacted in 1964, made reference to the Executive Order in a context which clearly contemplated its continuance [Section 709(d), 42 U.S.C. 2000-e8(d)]; *Contractors Association of Eastern Pennsylvania* v. *Secretary of Labor*, 442 F.2d 159, 171 (C.A. 3, 1971), *cert. denied*, 404 U.S. 854 (1971).

Finally, Congress expressly rejected an amendment by Senator Tower which would have made Title VII the exclusive federal remedy in the area of equal employment opportunity. 110 Cong. Rec. 13650-52. See, also, *Alexander* v. *Gardner Denver*, 415 U.S. 36(1974). Rejection of the Tower amendment signaled a clear Congressional intent that other federal equal employment efforts, including the Executive Order Program, not be preempted by the advent of Title VII.

(B) CONGRESS AGAIN RATIFIED THE EXECUTIVE ORDER PROGRAM IN 1972

By 1972, the Executive Order Program had taken on much of the shape it retains today. For example, Revised Order No. 4, which set forth specific rules for the contents of affirmative action programs, including the requirement of affected class remedial relief for persons who suffer the current effects of a contractor's past discrimination, was issued on December 4, 1971 (36 F.R. 23152; 118 Cong. Rec. 1396). Company (i.e., date of hire) seniority had been obtained under the Executive Order for minority employees in at least 12 cases (118 Cong. Rec. 1397); and in at least 11 cases, direct discrimination in recruitment, hiring or promotion had been remedied (118 Cong. Rec. 1397). The "goals and timetables" approach had been in effect for several years, and had been approved by the United States Court of Appeals in *Contractors Association of Eastern Pennsylvania* v. *Secretary of Labor*, supra, 442 F.2d 159.

Congress was well aware of these accomplishments under the Executive Order since they were brought to its attention during its consideration of the Equal Employment Opportunity Act of 1972 (Pub. L. 92-261), which extensively amended Title VII. For example:

(1) Senator Percy had printed in the Congressional Record a "summation of the important reasons for retaining the OFCCP in the Department of Labor and a discussion of the major achievements of that office" (118 Cong. Rec. 1395-1397). Senator Percy's statement outlined, inter alia, most of the Executive Order achievements discussed above.

(2) In addition, Senator Javits had the full decision from *Contractors Association*, supra, read into the Congressional Record (118 Cong. Rec. 1665).

Aginst this background, Congress rejected all but one attempt to limit Executive Order enforcement in the amendments to Title VII.

Congress specifically rejected a provision which would have transferred the Executive Order enforcement program to the Equal Employment Opportunity Commission (EEOC). Speaking in support of his amendment against the transfer, Senator Saxbe called attention to various differences between Title VII and the Executive Order. (118 Cong. Rec. 1385). Senator Saxbe stated:

"The affirmative action concept as innovatively and successfully employed by the OFCCP has been challenged as a violation of Title VII—*the courts have responded by stating that the Executive Order program is independent of Title VII and not subject to some of its more restrictive provisions.*

"*Section 10 of the proposed bill would place the entire Executive Order program under Title VII and might well result in renewed challenges to the many important programs established thereunder, for instance, the Philadelphia Plan.*" 118 Cong. Rec. 1386. (Emphasis supplied).

In supporting Senator Saxbe's amendment, Senator Percy made a similar statement in his "Summary of Retaining OFCC in the Department of Labor," supra. 118 Cong. Rec. 1395-1397. Senator Saxbe's amendment was adopted. 118 Cong. Rec. 1398.[1]

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[1] In lieu of the transfer, Senator Javits offered an amendment to establish the Equal Employment Opportunity Coordinating Council, with the Chairman of EEOC and the Secretary of Labor as members, in order to rectify a perceived "inadequacy of coordination" between the

Congress also rejected an amendment which would have made Title VII the exclusive Federal remedy in the field of employment descrimination for persons who filed charges with the EEOC. 118 Cong. Rec. 3367-3370; 3371-3373; 3959-3965. In opposing that amendment, Senator Williams, one of the floor managers of the bill, made the following statement (118 Cong. Rec. 372);

Furthermore, Mr. President, this amendment can be read to bar enforcement of the Government contract compliance program at least, in part, I cannot believe that the Senate would do that after all the votes we have taken in the past 2 to 3 years to continue that program in full force and effect.[2]

In addition, Congress rejected two amendments offered by Senator Ervin which would have blocked the recovery of goals and timetables under both Title VII and the Executive Order. 118 Cong. Rec. 1611-1676; 118 Cong. Rec. 1917-1918. In his opposition to the first of those amendments, Senator Javits cited with approval the United States Court of Appeals' hoding in *Contractors Association of Eastern Pennsylvania* v. *Secretary of Labor* supra, 442 F.2d 159, that Section 703(j) of Title VII does not limit relief available under the Executive Order. 118 Cong. Rec. 1664-1665. Senator Javits then had the full decision from *Contractors Association* read into the Congressional Record, including the Court's holding that:

The unions, it is said, refer men from the hiring halls on the basis of seniority, and the Philadelphia Plan Interferes with this arrangement since few minority tradesmen have high seniority. Just as with § 703(j) however, § 703(n) is a limitation only upon Title VII, not upon any other remedies," 118 Cong. Rec. 1665, 1669. 442 F.2d supra, at 172.[3]

In his opposition to Senator Ervin's second attempt to proscribe goals and timetables under the Executive Order, Senator Javits called attention to the fact that the amendment was seeking:

"to apply a particular provision of the Civil Rights Act of 1964 to the Executive Order in order to make unlawful any affirmative action plan like the so-called Philadelphia Plan, and by including the Executive Order in this title . . ."

". . . This amendment . . . seeks to cancel out the ability of the Federal Government to use the Philadelphia Plan approach of affirmative action plans respecting employment. The courts have upheld that plan. The Senate has upheld that plan. We say that Federal Government contractors should be a model in that respect." 118 Cong. Rec. 4910.

See, also *United States* v. *International Union of Elevator Constructors, Local Union No. 5*, 538 F.2d 1012, 1018-1019 (C.A. 3, 1976).

Finally, where Congress meant to limit Executive Order enforcement, it specifically did so. Senator Ervin offered an amendment requiring a full administrative hearing before denial or termination of Government contracts under the Executive Order, in cases where an affirmative action plan had previously been approved by the Department of Labor. 118 Cong. Rec. 1400-1402. That amendment was modified and adopted (118 Cong. Rec. 1507-1508) and became Section 718 of Title VII (42 U.S.C. 2000e-17).

The legal challenges to affirmative action programs came swiftly. The first major federal decision was in *Contractors Ass'n. of Eastern Pa.* v. *Secty. of Labor*, 442 F.2d 159 (3rd Cir. 1971) *cert. denied*, 404 U.S. 854 (1971). The Court of Appeals upheld the validity of affirmative action requirements by the Department of Labor in the construction industry. In the public sector, *Carter* v. *Gallagher*, 452 F.2d 315 (8th Cir. 1972) (en banc) cert. denied, 4096 U.S. 950 (1972), upheld affirmative action requirements for a fire department under 42 U.S.C. 1981.

During the 1970's, the courts have consistently upheld the validity of affirmative action based on court determinations of discrimination.

"First circuit: *Boston Chapter, NAACP, Inc.* v. *Beecher*, 504 F.2d 1017 (1st Cir. 1974), cert. denied, 421 U.S. 910 (1975); *Associated Gen. Contractors of Mass., Inc.* v. *Altschuler*, 490 F.2d 9 (1st Cir. 1973), cert. denied, 416 U.S. 957 (1974);

"Second circuit: *Rios* v. *Enterprise Ass'n Steamfitters Local 638*, 510 F.2d 622 (2d Cir. 1974); *Bridgeport Guardians, Inc.* v. *Bridgeport Civil Service Comm'n*, 482 F.2d 1333 (2d Cir. 1973); *United States* v. *Wood Lathers Local 46*, 471 F.2d 408 (2d Cir.), cert denied, 412 U.S. 939 (1973);

"Third circuit: *Erie Human Relations Comm'n* v. *Tullio*, 493 F.2d 371 (3d Cir. 1974); *Contractors Ass'n* v. *Secretary of Labor*, 442 F.2d 159 (3d Cir.), cert. denied, 404 U.S. 854 (1971);

"Fourth circuit: *Sherill* v. *J. P. Stevens & Co.*, 551 F.2d 308 (4th Cir. 1977);

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contract compliance program and the EEOC. 118 Congressional Record 1398-1399. That provision became Section 715 of title VII, 42 U.S.C. 2000e-14.

[2] Senator Williams was alluding, in part, to the debates over the Philadelphia Plan in which the position of the Department of Labor was sustained by Conress. 118 Cong. Rec. 1397-1398.

[3] The court also held that § 703(a) is not a limitation on the Executive Order. 442 F.2d at 173.

"Fifth circuit: *NAACP* v. *Allen*, 493 F.2d 614 (5th Cir. 1974); *Morrow* v. *Crisler*, 491 F.2d 1053 (5th Cir. 1974) (*en banc*), cert. denied, 419 U.S. 895 (1974); *Local 53, Asbestos Workers* v. *Vogler*, 407 F.2d 1047 (5th Cir. 1969);

"Sixth circuit: *EEOC* v. *Detroit Edison Co.*, 515 F.2d 301, 317 (6th Cir. 1975), *vacated and remanded on other grounds*, 431 U.S. 951 (1977); *United States* v. *Masonry Contractors Ass'n*, 497 F.2d 871, 877 (6th Cir. 1974); *United States* v. *Local 212, IBEW*, 472 F.2d 634 (6th Cir. 1983); *Sims* v. *Local 65, Sheet Metal Workers*, 489 F.2d 1023 (6th Cir. 1973); *United States* v. *Local 38, IBEW*, 428 F.2d 144 (6th Cir.), cert. denied, 400 U.S. 943 (1970);

"Seventh circuit: *United States* v. *Chicago*, 549 F.2d 415 (7th Cir. 1977), cert. denied, 434 U.S. 875 (1978); *Crockett* v. *Green*, 534 F.2d 715 (7th Cir. 1976); *Southern Ill. Builders Ass'n* v. *Ogilvie*, 471 F.2d 680 (7th Cir. 1972);

"Eighth circuit: *United States* v. *N. L. Industries, Inc.*, 479 F.2d 354 (8th Cir. 1973); *Carter* v. *Gallagher*, 452 F.2d 327 (8th Cir.) (en banc), cert. denied, 406 U.S. 950 (1972);

"Ninth circuit: *Davis* v. *Los Angeles*, 566 F.2d 1334 (9th Cir. 1977), vacated as moot, -- U.S. ——, 59 L.Ed.2d 642 (1979); *United States* v. *Ironworkers Local 86*, 443 F.2d 544 (9th Cir.), cert. denied, 404 U.S. 984 (1971)."

The issue of constitutionality of affirmative action on a voluntary basis, i.e., without a requirement of findings of past discrimination were rendered in the case of *University of California Regents* v. *Bakke*, 438 U.S. 265 (1978); and *United Steelworkers of America* v. *Weber*, 443 U.S. 193 (1979) (hereinafter *Weber*). In upholding the validity of race conscious admissions while striking down the specific minority admissions program of the University of California at Davis, the *Bakke* case is significant in upholding the concept under the Constitution but finding a statutory violation under Title VI (C. J. Burger, J. Stevens Rehnquist, Stewart). Finding the plan both constitutional and valid under Title VI were J. J. Brennan, White, Marshall and Blackmun. Justice Powell found the rigid plan violative of both.

In the context of Fourteenth Amendment limitations, the Supreme Court held: Yet we cannot—and as we shall demonstrate, need not under our Constitution or Title VI, which merely extends the constraints of the Fourteenth Amendment to private parties who receive federal funds—let color blindness become myopia which masks the reality that many "created equal" have been treated within our lifetimes as inferior both by the law and by their fellow citizens at 327.,

The *Weber* decision upheld the voluntary affirmative action training program of a private employer from challenge under Section 703 (a) and (d) of Title VII. The Court held in a 5-2 vote with two abstentions that the language of Title VII prohibiting 703(j) requiring employers to grant preferential treatment does not prohibit a voluntary affirmative action plan from permitting such preferences.

In addition to *Bakke*, the California Supreme Court has had other important cases dealing with affirmative action: *Price* v. *Civil Service Comm.* (1980) 26 Cal. 3rd 257, 286; 161 Cal. Rptr. 475, 604 P.2d 1365; and *DeRonde* v. *Regents of University of California*, (1981) 172 Cal. Rptr. 677.

In *Price*, the California Supreme Court held that a governmental entity may voluntarily adopt a race-conscious affirmative action program attributable to its own past discriminatory employment practices.

The recent decision in *DeRonde* upheld the admission procedures in the University of California at Davis law school which provided for consideration of ethnic minority status as a factor in selection of applicants for admission. The Court held the affirmative action admissions valid under challenges based on both the United States and California Constitutions.

". . .Yet in the specific context of minority advancement programs, we have stated our position quite recently and clearly, albeit by a divided court. In this area the court's majority has explicitly concluded that the state Constitution imposes no greater restrictions than similar guarantees provided by the federal charter. (*Price* v. *Civil Service Com.*, supra, 26 Cal. 3d 257, 284-285, 161 Cal. Rptr. 475, 604 P.2d 1365.) The principles of *Price* are clearly controlling here.

The most recent California court case dealing with affirmative action was *Minnick* v. *California Department of Corrections*, (1979) 95 Cal. App. 3rd 506, 157 Cal. Rptr. 260, posed a challenge to affirmative action in promotions. The California Court of Appeals upheld the case of affirmative action criteria. The United States Supreme Court initially granted a writ of certiorari ——— U.S ——— (1981) but recently dismissed the writ of certiorari, 26 EPD #31,842 (June 1, 1981) ——— U.S. ———.

Based upon our review of the court decisions, statutes, and regulations, affirmative action is not per se unlawful reverse discrimination which is or should be prohibited by the constitution. There is obviously no definitive response that will completely satisfy opponents and proponents on the issue of affirmative action. The debate continues in our courts and our legislative bodies. Given the importance of the issue we can and should expect a thorough and detailed review of this issue.

As stated by Justice Oliver Wendell Holmes:

"When men have realized that time has upset many fighting faiths, they may come to believe even more then they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment." *Otis* v. *Parker,* 187 U.S. 606 at 608 (1903)

The existence of specific violations within affirmative action programs such as reverse discrimination have been struck down by courts and other aspects prohibited or protected by judicial review of the statutes. *McDonald* v. *Santa Fe Trails Trnsp. Co.* 427 U.S. 273 (1976); *Intl. Brhd. of Teamsters* v. *United States* 431 U.S. 324 (1977); *Hazelwood School Dist.* v. *United States,* 433 U.S. 299 (1977) and *Washington* v. *Davis,* 426 U.S. 229 (1976). The striking down of rigid racial quotas has also been upheld by the courts, ***Bakke,*** supra.

The proponents of the "colorblind" interpretation of the equal protection clause of the Fourteenth Amendment of the United States Constitution enunciated in *Plessy* v. *Ferguson* 163 U.S. 537 (1896) argue that any consideration of race or ethnicity is unconstitutional. It should be noted that the majority in *Plessy* was upholding the "separate but equal" basis for perpetuating the segregation of black Americans in our society. While Americans strive to achieve the lofty principles upon which our Constitution rests, we would be remiss if we failed to consider that the 100 years dating from the Emancipation Proclamation to the enactment of civil rights legislation forming the basis for affirmative action left America with a legacy of inequality with which we struggle today. The racial/ethnic considerations have been upheld as constitutionally valid. The equal protection clauses do not prohibit any consideration of race since all candidates will have other factors considered and will not have been foreclosed from consideration simply because of race or ethnicity.

The use of the Fourteenth Amendment to defeat the hopes of proponents of legal developments is not new. The *Slaughter House Cases,* 16 Wall 36, 21 L. Ed. 394 (1873), prevented the application of the Fourteenth Amendment to redress inequalities by the states. In commenting on this use of the Fourteenth Amendment, Justice Holmes stated:

"There is nothing I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several states, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect." *Truax* v. *Corrigan,* 257 U.S. 312 at p. 344 (1921) (dissent)

The Supreme Court has upheld race or ethnic consideration in contexts other than employment. *Fullilove* v. *Klutznick* 448 U.S. 448 (1980) (set-asides in public works contracts); *United Jewish Organizations of Williamsburg* v. *Carey,* 430 U.S. 144 (1977) (redistricting for voter representation); *Castaneda* v. *Partida,* 430 U.S. 482 (1977) (jury representation); and *Lou* v. *Nichols,* 414 U.S. 563 (1974).

In conclusion the legal system in this nation through our laws, even manifested in our Constitution, condoned a system of slavery that was inconsistent with our constitutional provisions of freedom and liberty. Only through constitutional amendments have we begun to progress toward equality through the legal system for minorities and women. In recognition of the legal, economic, and social limitations placed upon certain groups of people, both Congress and the courts have provided for remedies and programs, such as affirmative action, designed to overcome the effects of deprivation.

STATEMENT OF REGINALD ALLEYENE, PROFESSOR, UCLA LAW SCHOOL

Mr. Alleyene. I am Reginald Alleyene. I am a professor of law at the University of California Law School here in Los Angeles where I have taught labor management relations and constitutional law for the past 11 years.

I am grateful for the opportunity to appear before the subcommittee this morning. I regret that I was invited only a week ago and for that reason, did not have time to prepare a statement. I understand that I can amplify remarks and send a prepared statement to the committee at a later time.

Mr. **Weiss**. We will welcome that.

Mr. **Alleyene**. My statement will be brief this morning, because I listened carefully to Governor Brown, to Assemblywoman Maxine Waters, and to Mr. Contreras, on my right this morning, and I certainly endorse all the reasons they have given in support of the need to continue affirmative action in employment as we have known it over the last 10 years in the United States.

I would just add one or two points to the arguments on the issue of why we should continue our affirmative action effort, points which I do not believe have been discussed pointedly.

One, I believe that the end of affirmative action would mean more than the end of affirmative action. I believe it would be a signal to many employers to return to the days of active discrimination against minorities and women.

That may appear to be an exaggeration. I believe it is not. I think many employers would take the view since it is now illegal to affirmatively hire minorities and women, we should bend over backward to avoid violating the law by simply not hiring them and relying upon the antiaffirmative action laws in support of our position.

I firmly believe that slowly, if not immediately, we will return to that state of affairs on the employment front if we no longer have as part of our legal fabric the requirement that employers maintain affirmative action programs.

Beyond that, I would offer the committee one or two suggestions which may prove to be useful in the committee's deliberations.

First of all, by way of background, as has been pointed out, there are really two types of affirmative action. We have type A, which is involuntary. That comes about when an employer has been found by the courts to have violated the existing Federal or State discrimination laws and when the court, as a remedy for that discrimination, imposes upon the violator a duty to hire minorities or women by using affirmative action numbers. In other words, they are required to fill a court imposed quota.

That type of affirmative action is now under attack, and as I understand it, would possibly be reversed by way of proposed constitutional amendments which are now lingering in various offices of the Congress of the United States.

I believe that it would mean virtually the end of not only the affirmative action program but the end of the effective enforcement of title VII and related statutes, which, on their face, do not require affirmative action but which merely require that employers refrain from discriminating on the basis of race, sex, nationality, or religion.

I believe that would be the consequence of ending involuntary affirmative action, because without the use of the quota remedy as a means of combating discrimination that if sound, in fact, by the courts, there will in many cases be no effective remedy for that discrimination, and with no effective remedy for the discrimination of a law which prohibits that discrimination, what will simply exist is a mere collection of words on a piece of paper with no real meaning, no meaningful effect.

The second type, type B, of affirmative action is the voluntary affirmative action which has as its underpinning no finding of racial discrmination by a court or an administrative agency. That is the kind of affirmative action that is required when the Government steps in and sees we have looked around at your numbers, they are not quite right, we believe that you should make a good faith effort to hire minorities in accordance with the following formula.

Or another example of type B voluntary affirmative action might be the case of an employer and a union simply getting together and deciding to include in a collective bargaining agreement a clause which sets up an affirmative action quota device for admitting blacks into, for example, training programs, apprentice programs leading to employment in skilled trades. When we see examples of an employer, a union that have jointly looked around, sensed that something was wrong on the discrimination front, and that they should voluntarily do something about it.

My suggestion to the committee is this: To the extent that voluntary affirmative action is being attacked by proposed constitutional amendment or by proposed legislation on the part of the Congress, I believe that the procedural counterattack at this time should be that those attacks and those attempts to amend the Constitution are simply premature.

That may come as a surprise to some members of the audience and possibly to some members of the committee, because we often hear that the Supreme Court's decision in the *Kaiser* case—*Weber* v. *Kaiser Aluminum*—involving the United Steel Workers Union stood for the proposition that voluntary affirmative action is constitutional, and the thinking is that the Supreme Court so held in the *Weber* case. Then the only way to overturn that decision and get rid of voluntary affirmative action, which has no underpinning of racial discrimination found by a court or an agency, is to pass a constitutional amendment to that effect.

I would read—and I hope the committee will read the *Weber* case in a different light. If you read *Weber* very carefully, which means reading all the little footnotes that the court has placed in its opinion, it is quite clear that the agreement entered into between the United Steel Workers of America and the Kaiser plant, in that case, was really not a voluntary affirmative action program.

The union, the company did not simply get together and say let's voluntarily do something about the fact that there are virtually no blacks in any of the skilled apprentice training programs, and therefore, no blacks in any of those skilled trades at the Kaiser plants throughout the South. No. Reading the opinion carefully, one gathers quite clearly that the agreement entered into by the steelworkers and the company in the *Weber* case was prompted by the Federal Government, specifically by the Office of Federal Contract Compliance Programs, which had conducted a thorough investigation of the Kaiser operation, had found that blacks were simply not working in any appreciable numbers in skilled trades.

The OFCCP then brought pressure to bear upon both the company and the union to change that practice. That pressure meant the threat of losing Federal contracts. It was pursuant to that threat that the Kaiser plant and the United Steel Workers of America entered into the agreement, the affirmative action agreement, which called for a quota number of blacks entering the apprentice training program until such time as a sufficient number of blacks were trained to change drastically the number of blacks working at skilled trades in the Kaiser plant.

So with that more detailed reading of the *Weber* case, I believe it is clear to say that we have yet to obtain from the Supreme Court of the U.S. a decision that voluntary affirmative action imposed without a court action finding discrimination, opposed without a Federal agency finding discrimination, has not yet been rendered by the U.S. Supreme Court.

I believe it would be beneficial, helpful for those who are interested in a constitutional amendment to end voluntary affirmative action to simply wait until the U.S. Supreme Court, as it eventually will surely pass upon that issue and decides that question one way or the other.

Mr. Contreras pointed out that some courts have upheld the constitutionality of voluntary affirmative action programs. He is right. Some U.S. courts of appeals have, some state supreme courts have, and eventually those decisions in the lower courts will reach the U.S. Supreme Court and we will get a new issue that has not yet been decided by the U.S. Supreme Court.

Thank you very much, again for the opportunity to present my views to you this morning.

Mr. WEISS. Thank you very much, both of you, for a very learned testimony which is going to be very helpful to this committee.

I have two comments, Mr. Alleyene, on your testimony. One, to concur wholeheartedly with your projection of what is likely to happen beyond the elimination of affirmative action programs, or affirmative action programs legislation. Interestingly, some of the testimony that we heard yesterday, although it was perhaps unconscious, gave some clue as to what may happen.

There was very clearly emanating from some of the witnesses on the CETA mandates that they objected to, a sense that had it not been for Federal mandates on providing employment opportunities for disadvantaged in the Federal programs themselves, that the private sector would consider it not only inconvenient, but that the very population which that legislation was intended to encompass was not up to potentially or actually being trained for the kind of jobs that were being offered by the private sector.

I think that you are right. It is easy to take refuge in other people's lack of qualification rather than admit that, in fact, maybe there is an underlying, unintended racism that is involved. I found it very worthwhile to have you point that out.

The second comment that I have is a concern on my part in the utilization of the term or the word "quota." I have both a philosophical problem with it, but I also have a pragmatic concern with it. I think we have been using goals and timetables because those are not as inflexible as quotas.

You can recognize good-faith efforts that are being made by companies and industries. If you are talking about goals and timetables you can do that. If you talk about quotas, even though they are making good-faith efforts, I think that might put them into a penalty position which you would not want to do. I think that the use of the term itself may not only be unfair, but perhaps also counterproductive, given the political climate that we find ourselves in.

Obviously if you would like to comment on that, I would welcome your thoughts.

Mr. ALLEYENE. Yes. First, I apologize. I like to use names, but your name tag is hidden by the tablecloth.

Mr. Weiss, when I write my prepared statement for the committee, I will use the term "goals and timetables" for the political reason that you point out. To me, there is really no difference between good-faith effort to reach a quota and a good-faith effort to reach a goal or a timetable. That being the case, if the term "quota" frightens people unduly, and they will accept the phrase "good-faith effort to reach goals and timetables," that would satisfy me.

Let there be no question about it, sir. Some courts have on the involuntary discrimination said flatly required quotas. Right here in Los Angeles, with our city police department, the 9th Circuit Court of Appeals has said you have been found guilty of discrimination on the basis of race and sex, and change that pattern. Here is the following quota that you must adhere to. Numbers, percentages. They didn't sue the word "goals."

My second answer to you, is that quotas are a reality out there and we cannot say that they do not exist because we are frightened by the word if, in fact, courts are requiring them.

In the case of voluntary affirmative action where quotas are imposed as a remedy for discrimination, I personally hope that the courts continue to use those quotas as a means of combating that discrimination until that discrimination ends. In other words, that is the penalty. I hope the courts will continue to use that device as a remedy for ending active types of racial, sex, and other discrimination.

Mr. WEISS. Again, I focused on the fact of the political consequences. As I said, I also have some philosophical concerns about it. My own background is such that I came from a situation where quotas were not used benignly to cure discrimination but in fact were used to impose discrimination.

I have a concern about legalizing quotas as quotas. You are never certain that once the beneficent purposes have exoired they will not hang on simply because it becomes a convenient way of doing business. So, as I say, I have problems both with the political and philosophical points.

I appreciate your testimony. It does seem sometimes, though, in fact dogmatic. I think it goes a little beyond that.

Mr. Contreras, I think that your testimony was very clear, but let me ask you a question just simply to underscore the point that I think you were making. The argument that is most often used against the legal validity of affirmative action and its constitutionality is that it constitutes a discriminatory preference. Are preferences of this sort forbidden in the statutes or in the cases that have developed?

Mr. CONTRERAS. I think that is the central issue that is being and has been debated in the courts. I think that what I would like to indicate is that the *Bakke* case was decided in the context of the

14th amendment limitations. Yet we cannot, and as we shall demonstrate, need not understand our Constitution or title VI—which merely extends the constraints of the 14th amendment to private parties who receive Federal funds—let color blindness become myopia, which masks the reality that many "created equal" have been treated within our lifetimes as inferior both by the law and by the fellow citizens.

Therefore, the Supreme Court in the *Bakke* case and in the *Weber* case said that color conscious remedies can be developed. Now, as to whether or not those remedies constitute preferences is a question of whether or not the problems which are being addressed. Require this consideration to become a preference.

To me, the term preference denotes to some extent what we had at *Davis*, and that was an inflexible, rigid plan. In other words, there were 16 slots that were set aside. The court struck that plan down as being too rigid, too inflexible, too great a preference.

Now, color conscious, ethnically conscious, racially conscious plans can be approved. Those have been approved. I think that where that line is going to be drawn in the future is the question. So that is the reason why I think the debate is going to continue, but I would say that even when there is no discrimination it is going to be permissible.

I would also like to point out that we have had contexts other than employment in which the Supreme Court has ruled. I would point out *Fullilove* v. *Klutznick*, which was a setaside by Congress, a 10 percent setaside of public funds for the public works contracts. That was upheld by the Supreme Court. That is an absolute setaside. Now, if the Supreme Court is willing to do that, then it seems to me that they are going to allow some flexibility in the employment context.

We also had *United Jewish Organization of Williamsburg* v. *Carrie*, relating to redistricting for voter representations; *Castaneda* v. *Partida*, on jury representation, raising the questions of grand jury participation there; and *Lau* v. *Nichols*, which is an education case dealing with linguistic problems.

It seems to me the courts are allowing some affirmative action consideration. Whether that would constitute an absolute preference, which would be getting close to a quota concept, I think that is where the courts are not going that far.

Mr. WEISS. Thank you.

Mr. Hawkins.

Mr. HAWKINS. Just one question for you, Professor Alleyene. In discussing the question of quotas and goals and timetables, let me clearly understand the distinction you seem to be drawing. We ordinarily identify goals with voluntary compliance, and in reply to a question to Mr. Weiss, you discussed the *LA Police Department* case where there had been a finding of legal discrimination. I can understand the sensitivity that some bear with respect to the use of quotas.

Is there a distinction that can be made against the goal setting of voluntary compliance and that of a legal remedy that is imposed by the court upon a finding of legal discrimination, and should the court itself be allowed to deal with this question in that manner? That is, Should the court be restricted in shaping a legal remedy upon a finding of discrimination in those instances and the setting of a quota? Is that a fair statement of the position that you have taken this morning?

Mr. ALLEYENE. I believe it is, if I understand you correctly. I agree with those courts which have imposed quotas. Call them anything you like by way of euphemism, but they are quotas. When those courts have found discrimination and ordered a remedy for that discrimination, they do it by saying, as a remedy, you can order the police department to hire *x* number of blacks over *x* period of time, or hire *x* percentage of females over a given period of time. That is an inflexibile quota. I believe it is warranted.

Mr. WEISS. Do you believe the Supreme Court will uphold it? I am not familiar with whether or not any of the cases have reached the Supreme Court. Looking at the present composition of the Supreme Court from the political point of view, and anticipating one of the future, do you think the Supreme Court will uphold the use of quotas where the lower courts have made a legal finding of discrimination? Do you think it is justified?

Mr. ALLEYENE. I believe the Supreme Court will, yes.

Mr. WEISS. You have no hesitancy about using "quota" without trying to paraphrase it or to soften it by the use of goals and timetables? Or do you see a legal distinction that can be made?

Mr. ALLEYENE. I see no legal distinction. I would be delighted to see the Court use the words "goals" and "timetables" if the Court means the same thing that I mean when I say inflexible quota. If the Supreme Court of the United States thinks that it will help make its decision more acceptable by using the term "goals" rather than the term "quota" and when they mean by the use of "goal" that you must hire *x* percentage of minorities or women, over a given period of time as a remedy for legally found discrimination, then that would satisfy me.

Mr. WEISS. Mr. Washington.

Mr. WASHINGTON. Mr. Alleyene, I agree with you wholeheartedly. I would like to buttress my position with as much logic in previous decisions as I can find.

Political considerations aside, the dialog must be candid, it must be honest. It must deal with this question. Clearly what we are talking about is a historical difference and change in the emphasis upon what quota meant. I recall back in the forties I was an adamant foe of quotas in support of some of my fanatic friends getting beat around the bush because they were being cut back and not being permitted to develop in law schools because of quotas imposed upon them. Those were negative aspects.

Now, the emphasis has changed. A word isn't just a word. It changes. The overtones change. Now by the word "quotas" you and I mean that there should be a clearcut expression, based on population, et cetera, that *x* number should be permitted to move into a given school and move into a given job discipline, et cetera, and so forth. I support that wholeheartedly.

In the final analysis, the opponents of goals and quotas are also opponents of goals and timetables. They are almost interchangeable. I am sure there are exceptions. I think you are right in meeting this argument here. I want to make it clear what we are talking about. I think you are a very able spokeman for that position.

We have a very slender legal reed to hook our hats on. That is the thing that disturbs me. You said it several times, but would you embellish that point again so we know exactly where we are?

There are lower court decisions, but isn't the *Weber* case and the *Bakke* case debilitating to our decision?

Mr. ALLEYENE. Oh, I think *Weber* certainly is not. IUE was very pleased with the Court's decision in *Weber*.

Mr. WASHINGTON. You are alluding to the undertones, those quietly spoken background to that case which led up to the case. You may be right. I won't quarrel with the point. I haven't read the case that tightly, but the Court didn't really take that much into consideration, the background that led up to it, the pressure from OFCCP. I wasn't aware of that.

Mr. ALLEYENE. It is in a footnote, in one of the early footnotes.

Mr. WASHINGTON. I usually put my thumb on the footnotes and my index finger on the script.

Mr. ALLEYENE. I don't blame you. The footnotes are printed in fine print. I don't know whether that was done deliberately or whether it was just an oversight. There was OFCCP pressure on both the company and the union, which of course is not an example of voluntary affirmative action.

But the *Weber* case was a victory, I think, for those of us who favor an end to discrimination in employment. This gets back to the earlier question of rigid goal or quota being approved for the admission of blacks to an apprentice training program.

Granted it was temporary. It was to last until the number of blacks in the skilled trades affected by the agreement reflected substantially their numbers in the community. So from the perspective of upholding the inflexible goal or quota, I applaud the decision. If that decision is followed in the future, when we look at title VII cases, for example, then I think the Court will have an easier time upholding the quotas imposed by the Federal district courts. We also would not have a footnote finding of discrimination but we would have a clear, several page decision of the circuit court of appeals upholding a Federal district judge who has made explicit finding of racial discrimination.

I think that is an easier case for the Supreme Court than the *Weber* case. Of course, I know the realities, as all of us do, that as new justices come on the Supreme Court, we may get a Supreme Court decision which, in fact overturns *Weber*. I think we have to assume that decisions on the books will be adhered to and possibly extended.

Mr. WASHINGTON. I hope you are right.

Do you think there would have been a difference in the *Weber* case and there not been a prior agreement, an agreement between the union and management in that case?

Mr. ALLEYENE. If there had not been an agreement between the union and management in that case to include in the parties' collective bargaining agreement the affirmative action quota with respect to the apprentice training program, then Mr. Weber would have had no quota to attack and, therefore, there would have been no *Weber* case, actually.

Mr. WASHINGTON. What I was trying to do was paint a scenario where management moved by itself without union support, so to speak, or if there were no union there?

Mr. ALLEYENE. In other words, the *Weber* case without a union? Yes, that is an interesting question. I think the result would have been the same. It is hard for me to see why we have two parties coming up with an agreement to take an action and one party, the employer, deciding to take that action. That would be true whether two parties took the action because of pressure from OFCCP or whether one party, the employer, took that action because of presure from OFCCP.

In other words, in your hypothetical, the employer would have feared the loss of a Government contract if it did not yield to the pressure of OFCCP to come up with some remedy for the absence of blacks in the skilled trades. Therefore, the employer, I believe, would very well have done what you suggested hypothetically the employer might have done alone. I do not see why the Supreme Court would have ruled any differently in that case than they would have in the actual case where we had a two party agreement.

Mr. WASHINGTON. I support your position. Notwithstanding political considerations, whatever they are, I think we are right in pressing for a clear stand on the issue of quotas.

Thank you.

Mr. WEISS. Mr. Peyser.

Mr. PEYSER. Thank you, Mr. Chairman.

I have no questions. I think the issue has been well covered in the wording and the meaning of what we are trying to get at here. I thank both gentlemen for their very excellent testimony. I yield back my time.

Mr. WEISS. Thank you very much.

I want to thank the witnesses for a very solid contribution to our discussion today. We will keep the record open for your submission.

Mr. ALLEYENE. Thank you.

Mr. CONTRERAS. Thank you.

Mr. WEISS. We will take a 5-minute recess at this point.

[A short recess was taken.]

Mr. HAWKINS. The committee will come to order.

We will hear from the next panel. The panel will consist of Prof. Harold Wilson of the Lawrence Berkeley Laboratories; Prof. Melvin Oliver, department of sociology at UCLA; Prof. Duran Bell, business department, University of California at Irvine; Henry Der, Chinese for Affirmative Action; and Angel Manzano, Mexican American Legal Defense and Educational Fund.

Professor Wilson, we understand that you have an extreme time constraint, so we will hear from you first.

STATEMENT OF HAROLD WILSON, LAWRENCE BERKELEY LABORATORIES

Mr. WILSON. I would like to correct the record. Some of my best friends are professors, but I happen not to be a professor. At the present time I am in a management position at the laboratory working out of the laboratory director's office.

Mr. Chairman, I am Harold Wilson. So you can better weigh the background for my remarks, I will briefly outline my work experience for you. For the past 11 years, from 1970 until recently, I served as the affirmative action administrator and then as the personnel director at the University of California, Lawrence Berkeley Laboratory, Berkeley, Calif. The laboratory is a large research laboratory funded by the U.S. Department of Energy, employing over 3,000 people with over 900 guests from all over the United States and from foreign countries ranging from the People's Republic of China to more than several Western European countries. Before that I was the president of a SEIU local union for 12 years and worked on the staff of AFL-CIO Central Labor Council, Alameda County, Calif., also serving as a member of the council's executive committee. I am also an ordained minister, having served as a parish minister in Walnut Creek, Calif. I have done consultant work in the affirmative action field, most recently consulting for the East Bay Regional Park District headquartered in Oakland, Calif.

In my testimony I have avoided the use of extensive statistical information because the central issues confronting your committee are not statistical but rather involve issues of values and philosophy. There is little argument that both minorities and women are not full participants in performing central or even lower-level roles proportionate to their numbers in any of our social, political, educational, or economic institutions. I have also avoided legal arguments, for although all of the judicial decisions are not in, it appears clear that the Justice Burger Supreme Court has allowed for the legality of using race as a factor in determining public policy in regard to affirmative action admission programs for educational institutions. Also in the employment area, the Court decisions leave little question of the constitutional basis for affirmative action programs. The central contentions are philosophical and political, not legal.

I find it necessary from time to time to validate my own sanity by making observations that are obvious on the face of it and obviously true in the hope that others will nod their head in agreement with me. My remarks that follow are representative of a few such comments.

First, institutional racism and sexism and its manifestations persist despite all of the claims that the problem has been solved. Parenthetically, those of us who struggle against it insist that there is a need for continued public Federal policies and programs to deal with its manifestation in employment and educational institutional practices.

Affirmative action programs have not solved the problems, but since their advent, for the first time in the history of the Nation, we have seen plans presented by private and public employers and educational institutions that have resulted in increased minority and female participation.

At best, affirmative action programs do not give preferential treatment to minorities or women but tend to make the selection procedures fairer. Although they do not insure even equal opportunity, they make the possibility of equal treatment more likely. In this regard the intense arguments over quotas and goals are but straw men with little or no reality in the marketplace of employment.

Most often the charge of preferential treatment stems from a belief in the validity of the selection procedures used in determining the best qualified candidate and a determined view that these procedures are a true reflection of the skills and knowledge required. Even a novice in the field of employment practices soon discovers that they are not. Affirmation action has done more to clarify job requirements and the concept of transferable skills than any other event in the history of the professional personnel field.

I might say as an aside that most of us find ourselves doing now what we never dream we would be doing and had no specific training.

The provisions of the original revised order 4 and its amendments that give direction to employers has had an interesting spinoff that is often overlooked. Educational institutions and employers have participated in programs aimed at increasing the availability of minorities and females in the work force that never would have occurred without the structure provided by the Federal regulations. They range from Bell Laboratory's summer internship program for women and minorities to the minority engineering program (MESA) at the University of California, Berkeley. Both of these programs have contributed greatly to the later employment of females and minorities in highly skilled jobs requiring at a minimum a college degree in computer science, science, or engineering. They are but examples of programs that are spinoffs of the existing Federal affirmative action orders and guidelines.

In addition to U.C.'s MESA program and the Bell Laboratory program, another example of such a spinoff is the joint program being developed between the institutions. I am employed by University of California's Lawrence Berkeley Laboratory, and Jackson State University, in Jackson, Miss.

[See attached draft of a "Memorandum of Understanding and Intent" for program details.]

[The memorandum referred to above follows:]

Memorandum of Understanding and Intent Between Jackson State University (JSU) and Lawrence Berkeley Laboratory (LBL) University of California

LBL and JSU announces their intent through, this Memorandum of Understanding & Intent to establish a joint program. The principal components of this program include: (1) Use of LBL's scientific support services, e.g., machine, electronic and glass blowing shops; (2) JSU-LBL Student Co-op; (3) Consultant Service; (4) Remote Access to LBL Computational Facilities; (5) Loan of equipment to JSU by LBL; (6) Collaborative Joint Research projects; (7) JSU-LBL Staff Appointments Established at Respective Institutions, e.g., Adjunct Faculty, Visiting Staff Scientist; (8) Mini-Courses/Seminars at JSU by LBL staff.

LBL and JSU will provide cost sharing and commit resources to various aspects of the program as follows:

1. JSU USE OF LBL SCIENTIFIC SUPPORT SERVICES, E.G. MACHINE, ELECTRONIC, AND GLASS BLOWING SHOPS

LBL will: provide JSU with technical expertise and facilities to support research programs that JSU and LBL are collaborating on.

JSU will: cover necessary transportation and subsistence cost for JSU staff involved in using these services when they are at Berkeley.

JSU will cover it's cost of materials.

2. JSU-LBL STUDENT CO-OP PROGRAM

LBL will: provide travel for 8 students a year at the cost $700 for each student ($5,600 total); Subsistence for 8 students at $24.50 per day for each student, (105 days in the semester, = $20,580 for 8 students); Stipend for 8 students at $200.00 each student ½ time for 3 months, = $4,800; Grand Total $30,980 for each semester.

JSU will: Identify graduate and undergraduate students who will participate in co-op program; Develop criteria for on-the-job work experience in concert with LBL; Provide guidelines for all aspects of the co-op program, e.g. respective institutional responsibilities, student responsibilities, credit contact hours schedule, requirements, evaluation, etc. (In concert with LBL.); The co-op program will be a two semester program and offer experiences in Computer Science/Scientific/Technical studies.

3. CONSULTANT SERVICES

LBL will provide: computer consultants to assist JSU faculty and students in using LBL's computational facilities and as requested, advise on the upgrading of the productivity of JSU's Computational Facilities;

Engineering and Technical consultants to assist in the design and construction of scientific apparatus for JSU;

Transportation and salary expenses for the LBL employees providing these consultant services;

JUS will provide: Subsistence and lodging for the LBL consultants.

4. REMOTE ACCESS TO LBL COMPUTATIONAL FACILITIES

LBL will provide: Remote access to LBL's computational facilities and share in computing expenses for collaborative projects; Loan of computer peripherals to strengthen JSU's computer capabilities; Access to software to JSU for Research Computer Science programs as permitted by agreements with vendors.

JSU will provide: Batch and inter-active remote job entry stations; Communication lines. (It is intended that individual research and educational projects at JSU will fund this.)

5. LOAN OF EQUIPMENT TO JSU BY LBL

LBL will provide: Short and long term loans of equipment to JSU to meet the needs of Computer Science and Research programs in the Division of Natural Sciences at JSU.

6. COLLABORATIVE JOINT RESEARCH PROJECTS

LBL and JSU scientists and staff will develop joint research programs on a project by project basis.

LBL will make available specific facilities and resource person to promote these research projects.

LBL and JSU scientists will work towards the submission of joint research proposals to appropriate funding agencies.

7. JSU-LBL STAFF/FACULTY APPOINTMENTS

JSU will provide Adjuct Faculty appointments for LBL staff who are significantly participating in this program.

LBL will grant Visiting Scientist status to JSU staff who are significantly participating in this program.

These Staff/Faculty appointments will be non-salaried.

8. MINI-COURSES/LECTURES/SEMINAR SPEAKERS

LBL will provide: Resource persons to teach courses in Computer Science and Biological and Physical Sciences.

JSU will provide: Housing and subsistence for LBL visitors participating in these activities at JSU.

This joint JSU/UC-LBL program has as its goal the enhancement of Computer Science and scientific research programs at both institutions and the strengthening of LBL's minority recruitment program.

The Memorandum of Understanding and Intent must be reviewed and concurred with/by the U.S. Department of Energy prior to implementation.

Mr. Wilson. This shows the power of a great institution, the research laboratory that I work at, as part of an understanding of the role of the historically black colleges and universities.

To understand that role is crucial if the underrepresentation of minorities in technical, professional, and scientific fields is to be dealt with. In a recent report of the National Resource Council's Commission of Human Resources, it was shown that 22 of the top 25 institutions producing most of the black baccalaureate graduates who later obtained a Ph. D. degree were historically black institutions. A similar analysis of data from the Engineering Manpower Commission shows that 23 percent of those who obtain the bachelor's degree in engineering were from 5 percent of the engineering schools in the country; these were the engineering departments in historically black institutions.

Because of this reality we have decided to engage in strengthening the research/educational capabilities of an historical black university, and have chosen Jackson State University because of its outstanding potential. We will recruit their graduates for highly technical employment opportunities when they graduate, and also for students interested in graduate education we will recruit them for the university's graduate programs.

There is a need for a close look at the linkage between education and employment and the development of new public policy to strengthen the program efforts of private and public employers and universities in this area rather than weakening those public policies.

Thank you.

[The prepared statement of Harold Wilson follows:]

PREPARED STATEMENT OF HAROLD A. WILSON, OAKLAND, CALIF.

Mr. Chairman, committee members, my name is Harold Wilson. So that you can better weigh the background for my remarks, I will briefly outline my work experience background. For over eleven years from 1970 to 1981 I have served as the Affirmative Action Administrator, and then the Personnel Director at the University of California, Lawrence Berkley Laboratory, Berkely, California. The laboratory is a large research laboratory funded by the U.S. Department of Energy, employing over 3,000 people with over 900 guests from all over the United States and from foreign countries ranging from the People's Republic of China to more than several Western European Countries. Before that I was the President of a SEIU Local Union for twelve years and worked on the staff of AFL-CIO Central Labor Councils Executive Committee. I am also an ordained minister having served as a parish minister, in Walnut Creek, California. I have done consultant work in the Affirmative field, most recently consulting for the East Bay Regional Park District headquartered in Oakland, California.

In my testimony I have avoided the use of extensive statistical information because the central issues confronting your committee are not statistical but rather involve issues of values and philosphy. There is little argument that both minorities and women are not full participants in performing central or even lower level roles proportionate to their numbers in any of our social, political, educational or economic institutions. I have also avoided legal arguments, for although all of the judicial decisions are not in, it appears clear that the Justice Berger, Supreme Court has allowed for the legality of using race as a factor in determining public policy in regard to Affirmative Action admission programs for educational institutions. Also in the employment area the court decisions leave little question of the constitutional basis for Affirmatie Action programs. The central contentions are philosophical and political not legal.

It is necessary for us from time to time to validate our sanity by making observations that are on the face of it true, in the hope that others will nod their heads in agreement. What follows are a few such comments:

Institutional racism and sexism and its manifestations persist despite all of the claims that the problem has been solved. Parenthetically those of us who struggle against it insist that there is a need for continued Public Federal Policies and Programs to deal with its manifestation in employment and educational institutional practices.

Affirmative Action programs have not solved the problems, but since their advent, for the first time in the history of the nation, we have seen plans presented by private and public employers and educational institutions that have resulted in increased minority and female participation.

At best Affirmative Action programs do not give preferential treatment to minorities or women but tend to make the selection procedures fairer and although they do not insure even equal opportunity they make the possibility of equal treatment more likely. In this regard the intense arguments over quotas and goals are but strawmen with little or no reality in the marketplace of employment.

Most often the charge of preferential treatment stems from a belief in the validity of the selection procedures used in determining the "best qualified candiate" and a determined view that these procedures are a true reflection of the skills and knowledge required. Even a novice in the field of Employment practices soon discovers that they are not. Affirmative Action has done more to clarify job requirements and the concept of transferable skills than any other event in the history of the professional personnel field.

The provisions of the original Revised Order Four and its amendments that give direction to employers has had an interesting spinoff that is often overlooked. Educational Institutions and employers have participated in programs aimed at increasing the availability of minorities and females in the work force that never would have occurred without the structure provided by the Federal Regulations. They range from Bell Laboratory's summer internship program for women and minorities to the Minority Engineering Program (MESA) at the University of California, Berkeley, Both of these programs have contributed greatly to the later employment of females and minorities in highly skilled jobs requiring at a minimum a college degree in computer science, science or engineering. They are but examples of programs that arespin offs of the existing Federal Affirmative Action Orders and Guidelines.

In addition to U. C.'s MESA program and the Bell Laboratory program, another example of such a spinoff is the joint program being developed between the institution I am employed by, University of California's Lawrence Berkeley Laboratory, and Jackson State University, in Jackson, Mississippi (see attached draft of a "Memorandum of Understanding and Intent", for program details.

An understanding of the role of the Historically Black Colleges and Universities is crucial if the under-representation of minorities in technical, professional, and scientific fields is to be dealt with. In a recent report of the National Resource Council's Commission of Human Resources, it is shown that 22 of the top 25 institutions producing most of the Black baccalaureate graduates who later obtained a Ph. D. degree were Historically Black Institutions. A similar analysis of data from the Engineering Manpower Commission shows that 23 percent of those who obtain the bachelors degree in engineering were from 5 percent of the engineering schools in the country, these were the engineering departments in historically Black institutions.

Because of this reality we have decided to engage in strengthening the research/educational capabilities of an Historical Black University and have chosen Jackson State University because of its outstanding potential. We will recruit their graduates for highly technical employment opportunities when they graduate, and also for students interested in graduate education we will recruit them for the Universities graduate programs.

There is a need for a close look at the linkage between education and employment and the development of new public policy to strengthen the program efforts of private and public employers and Universities in this area.

Mr. HAWKINS. The next witness is Prof. Melvin Oliver. I hope I am correct in addressing you in this instance, Mr. Oliver, as a professor.

STATEMENT OF MELVIN OLIVER, DEPARTMENT OF SOCIOLOGY, UNIVERSITY OF CALIFORNIA AT LOS ANGELES

Mr. OLIVER. Yes. First, I want to thank you for inviting me to share my research with you. It is really an honor for an academic to share research with policymakers, as most often our research is buried away in academic journals and the only people who ever read them are our peers, if they ever bother to open them up.

I am an assistant professor at UCLA in the Department of Sociology. My research interest has been focused on empirical, theoretical questions concerning the basis of function of racial inequality in American society. The research I am going to summarize was done precisely in response to public discussion about the propriety of affirmative action.

From a number of different quarters in the social scientific community, there is a much heated discussion concerning the merits of various aspects of affirmative action. A vocal segment of social scientists have emerged and are criticizing the very bases of these programs. They argue that affirmative action is no longer necessary. Prior to the 1960's, they contend, blacks were discriminated against in their pursuit of professional training and occupational opportunities. Since that time, discrimination has been obliterated. They conclude that from the mid-1960's and more importantly today blacks are harvesting the fruit of equal opportunity and have approached whites in terms of the indicators commonly associated with the American dream of upward mobility: Middle-class status and high earnings.

This is both a popular conception and part and parcel of a growing ideology in the social sciences which I call the new orthodoxy on black mobility. What I hope to show in this testimony is that the new orthodoxy tends to exaggerate the extent of black mobility and thus provides the input into social policy discussions to turn us away from affirmative action and to divert us from the path of pursuing occupational equality between blacks and whites in American society. From my analysis of the evidence, this is a counterproductive strategy if equality in the near future is our goal.

To begin, let me outline the basis of the new orthodoxy's argument. This doctrine contains three central points. First, it argues that the sixties were an era of expanding occupational opportunities for blacks. Second, this viewpoint argues that any remaining artifacts of a discriminatory hiring and mobility process is essentially a remnant of the past and does not represent the actual ongoing operation of the labor market today. Finally, the new orthodoxy contends that since race is no longer relevant as an inhibiting factor in securing jobs and social mobility for black Americans, social policy designed primarily to help blacks should be dismantled. The free market economy unfettered by social concerns like race is seen as the most desired context for improving and maintaining black economic advancement.

A number of scholarly studies and popular polemics have supported these contentions. The new orthodoxy has provided a formidable arsenal of data and argument that have been heeded by influential Members of Congress and the new administration. The influence of neoconservative intellectuals like Nathan Glazer, Irving Kristol, and Rose and Milton Friedman have all sparked public discussion of the pluses and minuses of affirmative action.

We are here today in response to a number of legislative proposals based on the premises of the new orthodoxy. While this viewpoint has recently had the ear of policymakers, it should be evident that a significant proportion of the social scientific community does not share these views.

I am one sociologist in disagreement with contentions of the new orthodoxy. As a social scientist, I take the arguments of the new orthodoxy to be hypotheses capable of being tested in an empirical analysis. In my testimony I examine the claims of the new orthodoxy through an analysis of data on intergenerational occupational mobility. These data allow one to determine in fairly precise ways what the gains of blacks during the sixties were compared to those of whites. Also I assess the extent to which contrary labor market processes are based on universalistic achievement criteria versus racially related factors which may account for different rates of mobilities for blacks and whites.

The need for affirmative action or some similar variant can be determined by projecting present rates of black mobility into the future to determine when significant progress toward parity with whites will be made. According to the new orthodoxy, nothing more than the present rates of mobility are needed to promote equality. This hypothesis can be empirically tested.

Finally, I will attempt to determine how much if any observed differences in black and white mobility are due to differences in the mobility process or differences in the origins and backgrounds of the two groups.

My empirical analyses of the occupational mobility of black and white Americans indicate that, one, while there were occupational gains during the sixties for black American males, it was not very significant when compared to white males. Blacks did show an improvement in the ability to inherit the status of white-collar fathers. However, they still lagged behind whites in this important social process.

Let me explain what I mean by inheriting the status of white-collar fathers. That refers to the fact in the 1960s when the social scientists looked at the data and you had a father who was a white-collar worker, you found out that blacks were not able to pass on that status to their sons. Only 15 percent of the fathers who had white-collar status had sons who had white-collar status. That has softened somewhat since 1962. The data is now 44 percent of those upper white-collar fathers are able to pass on their status to their sons. But when you compare that with whites, it still lags behind. Sixty percent of upper white-collar white fathers are able to pass on their white-collar status to their sons.

Two, the differences in occupational mobility observed between blacks and whites are related more to the fact that blacks are involved in a mobility process that is qualitatively different from whites than to any differences in the social origins or backgrounds of the two groups. Racial criteria still appears to be an important factor in differentiating the experiences of blacks and whites in the labor market.

Three, the results indicate that present rates of black mobility are woefully inadequate in moving blacks and whites toward occupational equality. Present rates of black and white mobility, if held constant over the next 10 generations, would change occupational inequality only slightly. The only hope of making genuine movement toward parity would be if blacks had mobility rates similar to whites; even in that case, it would still take three generations for black-white occupational equality to occur.

These findings have policy implications opposite those of the new orthodoxy. They point out how affirmative actions are important in our quest for racial equality. We cannot rest on the gains of the sixties, and hope that those gains will be enough to produce equality. If I read the data correctly, then policy must be strengthened in regard to affirmative action. If anything less is done, it will do little more than lead to gradual improvements that move us only a little closer to equality than we now find ourselves.

This testimony has provided an analysis of data that indicates that affirmative action of some sort is needed to improve occupational equality between races in American society. I conclude we must implement even stronger public policy than we have in the recent past. The alternative is the continuation of a polarized society along the lines of a privileged white population and an underprivileged black population. The inherent dangers to social and political stability in such a situation are well known to all of us. They deserve our gravest attention and concern.

One of the assumptions of my analysis is that mobility rates will continue at the same level. I think evidence has been presented here previous to mine which shows that the chances are that that mobility process is going to slow down or get worse because part of the increase has been associated with a growing economy. Our economy has started to die down. The other part of that increase has been associated with Government expenditures. If you look at the increase in black employment in white-collar positions it has been mainly in the governmental sector. If the governmental sector cuts back, it is going to hurt blacks more than other groups.

Given these changes in American society, it is paramount that the Federal Government not shipwreck affirmative action on the Scylla of half-truths promulgated by the new orthodoxy nor on the Charybdis of the fiscal frugality of the state. The aspirations of blacks for an equal share of the American dream could very well depend on the crucial decisions we make at this time in our history.

Thank you. [Applause.]

Mr. HAWKINS. Thank you, Professor Oliver. We appreciate the summary. May I indicate to the witnesses that we will have the full text of their statements printed in the record; and, therefore, if they see fit, they could summarize them as Mr. Oliver did. The record will indicate the full text of whatever statement is presented.

[The prepared testimony of Melvin Oliver follows:]

PREPARED TESTIMONY OF MELVIN L. OLIVER, PH. D., ASSISTANT PROFESSOR OF SOCIOLOGY AND FACULTY ASSOCIATE, CENTER FOR AFRO-AMERICAN STUDIES, UNIVERSITY OF CALIFORNIA, LOS ANGELES, CALIF.

IS AFFIRMATIVE ACTION NECESSARY? ONE SOCIOLOGIST'S VIEWPOINT [1]

Today, from a number of different quarters in the social scientific community, there is a much heated discussion concerning the merits of various aspects of affirmative action. A vocal segment of social scientists have emerged and are criticizing the very basis of these programs. They argue that affirmative action is no longer necessary. Prior to the sixties, they argue, blacks were discriminated against in their pursuit of professional training and occupational opportunities. However, since that time discrimination has been obliterated. They conclude that from the mid-sixties, and more importantly today, blacks are harvesting the fruit of equal opportunity and have approached whites in terms of the indicators commonly associated with the American dream of upward mobility; middle class status and high earnings. This is both a popular conception and part and parcel of a growing ideology in the social sciences which I call the "new orthodoxy" on black mobility.

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[1] This testimony is based on a study of black and white intergenerational mobility co-authored by myself, David D. McFarland and Mark Glick. The conclusions and policy implications are my own and do not necessarily reflect those of my collaborators.

What I hope to show in this testimony is that the "new orthodoxy" tends to exaggerate the extent of black mobility and thus provides the input into social policy discussions to turn us away from affirmative action and divert us from the path of pursuing occupational equality between blacks and whites in American society. From my analysis of the evidence this is a counter-productive strategy if equality in the near future is our goal.

The new orthodoxy

To begin let me outline the basis of the new orthodoxy's argument. This new doctrine contains three central arguments. First, it argues that the sixties were an era of expanding occupational opportunities for blacks. These opportunities allowed for increased social mobility and represented, for the first time in American history, the movement toward the implementation of "universalistic criteria" in the labor market (Featherman and Hauser: 319–321; Wilson, 1978). Second, this viewpoint argues that any remaining artifacts of a discriminatory hiring or mobility process is essentially, a remnant of the past and does not represent the actual ongoing operation of the labor market today (Freeman, 1976; Wilson, 1978; Featherman and Hauser, 1978). And finally, the new orthodoxy contends that since race is no longer relevant as an inhibiting factor in securing jobs and social mobility for black Americans, social policy designed primarily to help blacks should be dismantled. Whatever social policies are newly enacted should be geared to remedying any pernicious effects of the class system without reference to race or any other group characteristic (Glazer, 1975; Wilson, 1978). Another variant of this argument sees the working of the "free market" economy unfettered by social concerns like race as the most desired context for improving and maintaining black economic advancement (Sowell, 1975a).

In regard to the first argument, the empirical research carried out by Featherman and Hauser (1978) indicates that indeed the sixties were a period of rapid occupational advancement for most blacks. Using the best data available for measuring intergenerational occupational mobility (the Occupational Changes in a Generation sample), they found that upper status black fathers are more able to pass on their status to their son's than ever before. The problem that Blau and Duncan (1967) had previously observed, the inability of blacks to "inherit" the status of upper status fathers, appears to have been solved. Indeed, for those born after the mid-thirties, and even more for those born during World War II, ". . . black integenerational mobility compares favorably with that in the majority population" (Featherman and Hauser: 327). Clearly, on the basis of these data, the sixties were an era in which racial barriers fell substantially for blacks in the occupational sphere.

Likewise, Wilson (1978) has offered an analysis of the social and political factors that led to a more open and free labor market for blacks. Pointing to state actions that were in part a response to the civil rights movement, Wilson argues that ". . . the intervention of the state . . . removed many artificial discrimination barriers by municipal, state, and federal civil rights legislation . . . and contributed to the more liberal policies of the nation's labor unions by protective union legislation" (Wilson: 151). Also changes in the structure of the economy have made room for blacks who are educationally qualified. This has been aided by the expansion of the economy, due in no small part to the growth of large corporate entities and the government sector. The importance of government efforts in providing relatively well-paying and white collar job opportunities should not be overlooked. During the sixties the percentage of black workers in the government sector increased from 13.3 percent in 1960 to 21.4 percent in 1970 (Wilson, 103). Moreover, Wilson's summation of the result of these changes in black mobility opportunities bears out the contention that the sixties were a period of major changes for blacks. In speaking of today, Wilson notes that ". . . economic class is now a more important factor than race in determining job placement for blacks" (Wilson, 120). By implication Wilson is suggesting that the labor market today is more attuned to characteristics of achievement, such as education, rather than characteristics of ascription, such as race.

The second argument concerns the source of inequities that currently appear between blacks and whites on traditional measures of stratification, and revolves around establishing the benign role that race plays in the labor market today. In order to establish this, investigators have attempted to demonstrate that race is no longer a consideration in the acquisition of jobs and in equal pay for performing jobs similar to those held by whites. Therefore, any disparities that do exist merely reflect "... the consequence of the historic effects of racial discrimination..." rather than discrimination at this point in time (Wilson:xi). Summarizing the results of his sophisticated econometric analysis of black-white income differentials, Freeman concludes from his data "... that traditional discriminatory differences in the labor market are abating rapidly" (1973:118). This seems especially the case for young blacks. For example, young black and white male entrants to the labor market with similar social and economic background characteristics were both "... just as likely to find high-paying jobs and just as likely to escape from bad jobs" (Hall and Eastern:785).

While not denying that inequities exist, proponents of the argument point to these differences as deriving from inequities in "origins" and "human capital": qualities that blacks bring into the job market and which may have been the result of racial discrimination in other areas (i.e. education), but which are not generated in the labor market assignment process itself (Featherman and Hauser:364-66). As Freeman has labored so hard to show, blacks today with the necessary credentials are being hired in lucrative positions at a rate equal to or higher than whites, and furthermore, their pay is likewise as good or better (Freeman, 1976). In Wilson's words, the deleterious position of blacks in the economy today "has more to do with the historical consequences of racial oppression than with the current effects of race" (Wilson:154).

This leads us to the new orthodoxy's third argument which concerns the relevance of the previously cited contentions to issues of contemporary social policy. In his polemical attack on policies characterized as "affirmative discrimination," Glazer (1975) argues that, in the face of a preponderance of evidence that blacks today are receiving a fair shake in the labor market, social policies based on racial criteria are clearly untenable. Employment policies, for example, tend to help precisely those who are in least need of help, the highly skilled and well educated who face good job prospects in todays nondiscriminatory labor market (Glazer:73; Wilson:121). Glazer debunks any social policies which are geared to remedy disabilities that are disporportionately felt by one racial group. He argues "... that public policy must be exercised without distinction to race ..." and instead should be directed toward the good of the abstract "individual" as opposed to members of racial groups or categories (Glazer:222-21).

This is consistent with a line of thinking that is having a rennaissance in soicaligical work in race relations; the immigrant analogy (See Lieberson, 1981). Since blacks are the most recent immigrants to urban America they must stand in queue with other immigrants to gain economic success. Just as other ethnic groups have "made it" blacks today are making similar gains by sharing a "piece of the pie" as it becomes available. Social policy specifically geared to helping blacks is therefore unneeded as they will take their rightful place in due time. To provide compensatory social policy would be both a misleading ploy to follow and unfair to other ethnic groups who "made it" in a similar way (See Blauner (1972) for a critique of this view).

Conservative economic analysts are also very suspicious of affirmative action programs or any social policy carried out by the state that interferes with the "normal" functioning of the economy. Thomas Sowell (1975a, 1975b) has been particularly concerned with affirmative action and minimum wage laws as examples of social policy, which while intended to help blacks and other low-income groups, in actuality only further aggravates their economic condition (Williams, 1978; Friedman and Friedman, 1980). Conservative economists converge with those who see affirmative action as unncessary and who stress the gains made by blacks in the contemporary period.

Wilson also finds such policies as affirmative action superfluous in the light of the realities of the contemporary labor market. Unskilled and uneducated blacks are unable to benefit from affirmative action programs, as they usually center on skilled jobs with high educatioal requirements, Wilson's analysis is concentrated on explaining the "class" barriers that lower-class blacks now face, and he is emphatic in viewing this problem in class rather than racial terms. Wilson is quite willing to drop all social policy which is designed to combat "racial" barriers to mobility. The clarion call of the future is "... public policy programs to attack inequality on a broad class front ... that go beyond the limits of ethnic and racial discrimination by directly confronting the pervasive and destructive features of class subordination" (Wilson:154).

The new orthodoxy has provided a formidable arsenal of data and arguments that have been heeded by influential members of Congress and the new adminstration. The influence of neo-conservative (Glazer, 1975; Kristol, 1978) and free-market conservative intellecutals (Sowell, 1975a, 1975b Friedman and Friedman, 1980) have all sparked public discussion of the plusses and minuses of affirmative action. We are here today in response to a number of legislative proposals based on the premises of the new orthodxy. While this viewpoint has recently had the ear of policy makers, it should be evident that a significant proportion of the social scientific community does not share these views (Newman et. al., 1978; Levitan, et. al., 1975). I am one sociologist in disagreement with the contentions of the new orthodoxy.

Assessing the new orthodoxy

As a social scientist I take the arguments of the new orthodoxy to be hypotheses that are capable of being tested in an empirical analysis. As a sociologist, I tend to examine social mobility generationally; that is, I attempt to gauge social mobility through observing the pattern of movement between statuses (occupations) of fathers and sons. For example, when a father has a professional occupation and the son a blue collar occupation we speak of downward social mobility generations.[1] If the father was blue collar worker and the son a professional we characterize such movement as upward mobility; similar occuptional status between father and son denotes a case of occupational inheritance. We can evaluate the claims of the new orthodoxy by examining data on intergenerational occupational mobility. These data allow one to determine in fairly precise ways what the gains of blacks during the sixties were compared to those of whites, which in any analysis has to be the point of comparison. Also, I can assess the extent to which contemporary labor market processes are based on universalistic achievement criteria versus racially related factors which may account for different rates of mobility for blacks and whites. The need for affirmative action or some similar variant can be determined by projecting present rates of black mobility into the future to determine when significant progress toward parity with whites will be made. According to the new orthodoxy nothing more than the present rates of mobility, stripped of their discriminatory influences, are needed to promote equality. Finally, I will attempt to determine how much of any observed differences in black and white mobility are due to differences in the mobility process or differences in the origins of the two groups.

Data and methods

This study uses data collected by the U.S. Bureau of the Census in 1962 and 1973 under the title "Occupational changes in a Generation" (OCG). These data were collected with the express purpose of allowing the measurement and analysis of the processes of intra and intergenerational mobility. The 1973 study was conducted as a strict replication (Featherman and Hauser: 3–9) of the 1962 study (Blau and Duncan, 1967). Both samples attempted to tap a cross-section of the target population of males 20–64 years of age in the civilian noninstitutional population in March of 1962 and 1973. The 1962 sample is smaller (N=20,700) than the 1973 sample (N=30,228), and the latter, because of Featherman and Hauser's special interest in examining the minority population, contains a larger number of blacks than the 1962 sample (1,532 in 1962 compared to 4,856 in 1973). The overall quality of the data is considered excellent (Featherman and Hauser:9; Beilby et. al., 1977).

My concern is with the extent to which occupational mobility has changed since 1962 and 1973 for blacks, keeping in mind the claims of the new orthodoxy on black mobility. The data used to measure occupational changes were elicited by making queries concerning the occupations of respondents at the time of the interview and their recollection of their father's occupation when the respondent's were age 16.

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[1] The explicit designation of upper white-collar as representing the highest and lower blue-collar the lowest occupational grouping rest on a body of research in which sociologists have attempted to chart the vertical dimension of the occupational structure. The work in this area consistently shows that there is a fairly consistent prestige hierarchy of occupations that is present in nearly all industrialized countries. It is this hierarchy which I use to interpret the direction of occupational movement. Prestige and the extent of economic rewards are closely correlated and therefore serve our purposes here very well (Featherman and Hauser, 25–37). We can further breakdown our broad occupational categories to specific types of occupations. Upper white-collar: (1) professionals, self-employed; (2) professionals, salaried; (3) managers; (4) salesmen, other. Lower white-collar: (1) proprietors; (2) clerks; (3) salesmen, retail. Upper blue-collar: (1) craftsmen, manufacturing; (2) craftsmen, other; (3) craftsmen, construction. Lower blue-collar: (1) service; (2) operatives, other; (3) operatives, manufacturing; (4) laborers, manufacturing; (5) laborers, other. Farm: (1) farmers; (2) farm laborers.

The basic piece of data in the study of intergenerational occupational mobility is the "mobility matrix", which correlates the father's occupation at age 16 with the son's current occupation. Table 1 shows the mobility matrix for black males in 1962, black males in 1973 and white males in 1973. These three matrices are the basis of our analysis.

Table 1[a]

OCG MATRIX OF OCCUPATIONAL MOBILITY FOR BLACK MALES IN 1962
RESPONDENT'S OCCUPATION

Father's Occupation	Upper white-collar	Lower white-collar	Upper blue-collar	Lower blue collar	Farm
Upper white-collar	.133[b]	.1	.137	.63	0
Lower white-collar	.083	.14	.14	.637	0
Upper blue-collar	.082	.104	.109	.67	.03
Lower blue-collar	.067	.091	.111	.71	.021
Farm	.012	.054	.071	.663	.199
		.81			

OCG MATRIX OF OCCUPATIONAL MOBILITY FOR BLACK MALES IN 1973
RESPONDENT'S OCCUPATION

Father's Occupation	Upper white-collar	Lower white-collar	Upper blue-collar	Lower blue-collar	Farm
Upper white-collar	.439	.118	.083	.360	0
Lower white-collar	.195	.208	.134	.455	.008
Upper blue-collar	.163	.139	.158	.531	.002
	.302				
Lower blue-collar	.121	.122	.137	.610	.010
		.380			
Farm	.051	.068	.165	.632	.084

OCG MATRIX OF OCCUPATIONAL MOBILITY FOR WHITE MALES IN 1973[b]
RESPONDENT'S OCCUPATION

Father's Occupation	Upper white-collar	Lower white-collar	Upper blue-collar	Lower blue-collar	Farm
Upper white-collar	.597	.114	.129	.150	.009
Lower white-collar	.460	.165	.165	.197	.012
Upper blue-collar	.315	.121	.282	.270	.012
	.436				
Lower blue-collar	.246	.121	.255	.368	.010
		.622			
Farm	.182	.094	.239	.331	.155

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a) Source: Featherman and Hauser, 1978:89,326,533.

b) All figures underlined are in the text. Hopefully this will allow the reader to see where the figures cited came from.

Our mode of analysis is the Markov-chain model. The Markov model has been used in numerous social mobility studies. My use closely parallels that of Lieberson and Fugitt (1967) and Duncan (1968). To briefly summarize, a Markov-chain model as applied to the analysis of social mobility consists of the mobility matrix which contains an array of probabilities designating the movement from occupation i to occupation j, between generation, given by an entry pij. Table 1 arranges occupational data in this fashion. An entry Pij, in any of the three matrices, represents the conditional probability that a respondent is in occupation j, given that his father was in i. So, for example, the entry in the first row, first column of the matrix of occupational mobility for white males in 1973 is .597, and represents the probability that the respondent is in an upper white collar occupation, given that his father was in the same category. The most distinctive attribute of the Markov-chain model is its ability to forecast what the distribution of percentages for black and white populations within the occupational categories listed would look like in future generations under the assumption that current mobility patterns persist. That is, if "t" is a row vector of percentages of the black or white population in each of the occupational categories, and P is the matrix of occupational mobility, then $tP = t_1$ where t_1 is the vector of percentages of the particular population in each occupational category one generation later. Proceeding the same way but substituting P^2 for P give us $tP^2 = t_1$ where t_2 is the vector of percentages of the particular population distributed among each occupational category two generations later, ans so on. More generally, $tP^n = t_n$ where "n" is the number of generations.

Of course, an analysis projecting present day mobility trends makes a number of questionable assumptions. The assumption of constant mobility trends over a series of generations. The assumption of constant mobility trends over a series of generations is empirically and theoretically suspect. Socioeconomic and demographic forces lead to much more change, in direction and magnitude, than the model allows (Lieberson and Fugitt:191). However, as a heuristic aid, such projections can help us better evaluate certain claims of the new orthodoxy, expecially those claims that relate to issues of public policy. In a later section I will address the issue of what effects the assumptions of the model may have on our findings.

Analysis

My first goal is to examine the mobility trends among blacks in 1962 and 1973. In Table 1 the two mobility matrices needed to address this issue are presented. In 1962 black mobility was mostly downward, except for upward mobility from farm occupations. There was a .81 probability that sons of farmers would likely be found in higher occupational categories, although such mobility was very small, with a .633 probability that farmer's sons would occupy lower blue collar positions. This mobility reflected larger societal changes that produced a decrease in farm jobs and population movement to urban areas where blacks found themselves on the bottom of the occupational hierarchy (Duncan: 21–2). What is more striking though, are the high probabilities that, no matter what their father's occupation, blacks were in all cases most likely to be in lower blue-collar occupations. This is most evident in the mobility patterns of ones whose fathers had upper white-collar occupations. The probability of a son maintaining his father's status was only .13. He was more than four times as likely (.63) to be in a lower blue-collar job. It was this inability of blacks to "inherit" their father's upper white-collar status that Blau and Duncan (1967) found so exceptional about black intergenerational occupational mobility. However, when we examine the black mobility matrix for 1973, we find that some changes occurred in this pattern. While the sons of farmers continued to exhibit the most mobility, be it very small, the previously cited pattern of status "disinheritance" among upper white-collar sons seemed to have softened. A striking difference emerged. In 1973 sons of upper white-collar fathers had a probability of .439 of inheriting their father's status. The amount of downward mobility that these sons experienced was less than in 1962; however, more disturbing is the strong probability that over a third of these sons (.360) would end up skidding all the way down to lower blue-collor positions.

These data lend some support to the notion that the sixties produced a good deal of mobility opportunities for blacks. But for the 1973 trends to be meaningful, they must be compared to 1973 white trends to gauge just how much these changes contributed toward equalizing mobility opportunites for blacks and whites. The 1973 white mobility matrix exhibits a patten which is almost the opposite of blacks. White intergenerational occupational mobility is mainly upward and static; a great deal of status inheritance is evident. For example, upper white-collar fathers are able to pass on to their sons their same high status almost 60 percent of the time (.158 greater probability than blacks), and their sons fall to the bottom of the occupational hierarchy (lower blue-collar jobs) only 15 percent of the time, less than half as often as comparable blacks. Furthermore, in each occupational category (excluding farm) white males are more likely to experience intergenerational upward mobility than blacks; more than twice as likely when the father has a lower white-collar occupation (.460 to .195), and almost twice as likely in blue-collar categories; .436 to .302 in the upper blue-collar category and .622 to .380 in the lower blue-colar category. This while the absolute gains of the sixties were impressive when compared against previous black trends, they shrink considerably when compared to trends in white intergenerational occupational mobility. It remains very clear that, even when considering the gains of the sixties, blacks and whites were still experiencing vastly different mobility opportunities in American society.

The evaluation of the new orthodoxy can also be made through the application of Markov-chain models to these data. In Table 2 we view 6 panels which have used various vectors derived from black and white mobility trends in the 1962 and 1973 OCG surveys to predict future black and white occupational distributions. The left side of the panel predicts occupational distributions of blacks and whites using the 1962 data, while the right side uses the 1973 data.

Table 2

1962 OCG SURVEY

I. Black Males[a]	UWC	LWC	UBC	LBC	F
1. Fathers	.04	.03	.09	.38	.48
2. Respondents	.04	.08	.09	.68	.11
3. Sons	.07	.09	.11	.70	.04
4. Grandsons	.07	.10	.11	.70	.02
5. Greatgrandsons	.07	.10	.11	.70	.02
6. after 10 generations	.07	.10	.11	.70	.02

II. White Males	UWC	LWC	UBC	LBC	F
1. Fathers	.12	.14	.20	.27	.08
2. Respondents	.26	.17	.21	.29	.07
3. Sons	.34	.17	.20	.26	.03
4. Grandsons	.38	.18	.19	.24	.02
5. Greatgrandsons	.39	.18	.18	.23	.02
6. after 10 generations	.40	.18	.18	.23	.02

III. Black Origins with White Mobility	UWC	LWC	UBC	LBC	F
1. Fathers	.1				
2. Respondents	.18	.15	.22	.33	.12
3. Sons	.30	.17	.20	.29	.04
4. Grandsons	.36	.18	.19	.25	.02
5. Greatgrandsons	.38	.18	.18	.23	.02
6. after 10 generations	.40	.18	.18	.22	.02

1973 OCG SURVEY

I. Black Males	UWC	LWC	UBC	LBC	F
1. Fathers	.04	.04	.10	.46	.36
2. Respondents	.12	.11	.15	.59	.06
3. Sons	.17	.13	.13	.55	.01
4. Grandsons	.19	.13	.13	.54	.01
5. Greatgrandsons	.20	.13	.13	.53	.01
6. after 10 generations	.2C	.13	.13	.53	.01

II. White Males	UWC	LWC	UBC	LBC	F
1. Fathers	.16	.12	.21	.28	.22
2. Respondents	.33	.12	.23	.28	.04
3. Sons	.40	.12	.21	.25	.01
4. Grandsons	.42	.12	.20	.24	.01
5. Greatgrandsons	.43	.12	.19	.23	.01
6. after 10 generations	.43	.12	.19	.23	.01

III. Black Origins with White Mobility	UWC	LWC	UBC	LBC	F
1. Fathers	.04	.04	.10	.46	.36
2. Respondents	.25	.11	.24	.33	.06
3. Sons	.37	.12	.22	.27	.02
4. Grandsons	.42	.12	.20	.24	.01
5. Greatgrandsons	.43	.12	.19	.24	.01
6. after 10 generations	.43	.12	.19	.23	.01

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a) Abbreviations are for the categories in Table 2:
UWC = Upper white-collar
LWC = Lower white-collar
UBC = Upper blue-collar
LBC = Lower blue-collar
F = Farm

Turning ones attention to the 1962 data we observe in Panel 1 that if the rates of mobility for blacks had remained at the 1962 levels, blacks would not have even approched the occupational distribution of whites in 1962 after ten generations. This certainly highlights the intense inequality that blacks faced prior to the sixties. However, projecting 1973 black mobility rates across time, we note the disconcerting finding that blacks, even with their improved rates of mobility, will not attain the occupational distribution of whites in 1962 even after ten generations; blacks will still be less likely found in upper white-collar occupations (20 percent) than whites (26 percent) and more likely found in lower blue-collar occupations (53 percent than whites (29 percent). It appears very clear that the 1973 rates of black mobility, while much higher than those found in 1962, are still not moving us toward occupational equality between the races. Indeed, if black and white mobility trends remained constant in 1973 terms, black-white inequities in occupational distributions after ten generations would change only slightly. Whereas in 1973 black males were a little more than one-third (12 percent) as likely as white to have upper white-collar occupations (33 percent projections indicate that after ten generations the improvement would only be up to almost half as likely (20 percent to 43 percent). In terms of lower blue-collar jobs, blacks will remain more than twice as likely (53 percent) as whites (23 percent) to occupy those jobs in the social structure after ten generations. A policy implication from these data appears clear: If equality between blacks and whites in the near future is a goal, then significant improvements in black mobility must occur; the gains of the sixties are not sufficient to insure such a state in the immediate future.

Markov-chain models also help us untangle whether or not the differences we have observed in racial mobility rates are due to the fact that blacks start from low origins and thus bring to the mobility process deficient skills for mobility or whether the differences observed represent genuine racial differences in mobility. We can address this issue by setting up a number of hypothetical occupational distributions for blacks and whites, controlling for origins and different rates of mobility associated with each racial group. First, we can show what the black occupational distribution would look like if we held black origins constant but blacks had the same mobility vectors as whites. We have done this in panel 3 for the 1962 and 1973 OCG data respectively. Turning to the black occupational distribution with 1962 black origins and white mobility rates, we note that black and white occupational distributions would coverage after three generations. Likewise the 1973 matrix shows that only two generations would be needed for black-white occupational parity if blacks has white mobility rates. Thus it appears clear that, compared to projections based on actual rates of black mobility, if blacks had white rates of mobility it would certainly speed up the process of equality considerably.

My final task is to attempt to decompose, or to differentiate, how much of the observed occupational inequality between blacks and whites is due to unequal origins as opposed to unequal mobility. A measure of total occupational inequality must first be developed. I have derived an index of occupational inequality by computing the difference between the proportion of black and white respondents in each occupational category. For example, the proportion of blacks in upper white-colar occupations in 1973 was .12, while for whites it was .33; the difference which measures the total inequality between blacks and whites in that category is .21, indicating that there was significant inequality within that category and that whites were much more likely than blacks to be found in the upper-white collar group. Having some numerical index of inequality, the task is now to decompose the inequality so as to determine how much of it is due to origins or to different rates of mobility. The process for doing this involves holding constant the origins of both black and white respondents (i.e. father's occupation). This has been done in Table 2 under the 1973 OCG survey, panels 2 and 3. We have the mobility patterns for whites with their own origins and white mobility rates, and a hypothetical mobility matrix for black respondents with the same origins as whites, but, with the basic difference being that they have black mobility rates. Thus the index of occupational inequality derived from these two occupational distributions represents the amount of the total inequality explained by different mobility rates, since we have held consistant origins. The findings are very clear. In the upper white collar, upper blue collar and lower blue collar categories, an overwhelming amount of the total inequality is attributable to unequal mobility rates. For example, total inequality in the upper white collar category produces an index of inequality of .21; .14 of this total inequality is due to unequal mobility rates while only one third is due to unequal origins. A more striking set of findings is noted among lower blue collar men. Over four-fifths of the total inequality in that category is attributable to differing mobility rates (−.31 is the index of occupational inequality for the lower blue collar category while −.26 of it is derived from unequal mobility rates).

Table 3

THE DECOMPOSITION OF THE TOTAL OCCUPATIONAL INEQUALITY BETWEEN BLACK AND WHITE MALES IN 1973

Total inequality[a]

UWC	LWC	UBC	LBC	F
.21[d]	.01	.08	-.31	.006

Inequality Attributable to Unequal Mobility[b]

UWC	LWC	UBC	LBC	F
.14	.005	.10	-.26	.02

Inequality Attributable to Unequal Origins[c]

UWC	LWC	UBC	LBC	F
.08	.006	-.02	-.05	-.02

a) The total inequality is the difference between the percentage of respondent whites in each occupational category and the percentages of respondent blacks in each category.

b) The inequality attributable to Unequal Mobility is the difference of white and black respondents with origins held constant, that is, the difference between the ideal respondents with black origins and white mobility and the respondents with black origins and black mobility.

c) The inequality attributable to unequal origins is the difference of white and black respondents with mobility constant. That is, the difference between respondents with white origins and white mobility and ideal respondents with black origins and white mobility.

d) Within each category, the proportion of inequality attributed to unequal origins and unequal mobility should add up to the proportion of total inequality. This may not be the case because of rounding errors.

Provided that our procedures have cancelled out the effects of individual origin, it becomes increasingly evident that a major part of the differences found in intergenerational mobility between blacks and whites is located in a mobility process that is still operating on the basis of racial criteria.

Summary

Having examined empirically the claims of the new orthodoxy I can now evaluate them in the light of the research findings just presented. My empirical analysis of the occupational mobility of black and white Americans indicate that:

(1) While there were occupational gains during the sixties for black American males it was not very significant when compared to white males. Blacks did show an improvement in the ability to inherit the status of upper white-collar fathers, however they still lag behind whites in this important social process.

(2) The differences in occupational mobility observed between blacks and whites are related more to the fact that blacks are involved in a mobility process that is qualitatively different from whites than to any differences in the social origins of the two groups. Racial criteria still appear to be an important factor in differentiating the experiences of blacks and whites in the labor market.

(3) And finally, the results indicate that present rates of black mobility are woefully inadequate in moving blacks and whites toward occupational equality. Present rates of black and white mobility, if held constant, would change occupational inequality only slighjtly. The only hope of making genuine movement toward parity would be if blacks had mobility rates similar to whites. In that case, it would still take three generations for black-white occupational equality to occur.

These findings have policy implications opposite those of the new orthodoxy. They point important affirmative actions are in our quest for racial equality. We cannot rest on the gains of the sixties and hope that those gains will be enough to produce equality. If I read the data correctly, then policy must be strengthened in regard to affirmative action; if anything less is done it will do little more than lead to gradual improvement that move us only a little closer to equality than we now find ourselves.

Discussion

This testimony has provided an analysis of data that indicates that affirmative actions of some sort are sorely needed to improve occupational equality between the races in American society. I conclude that we must implement even stronger public policy than we have in the recent past. Our alternative is the continuation of a polarized society along the lines of a privileged white population and an underprivileged black population. The inherent dangers to social and political stability in such a situation are well known to all of us, and deserve our gravest attention and concern.

It could be argued that our analysis, based on a mathematical model, does not constitute an accurage projection concerning future mobility trends because of the set of assumptions of a static and unchanging society that the model entails. This criticism is justified. Mobility rates vary depending on a number of social, demographic and economic circumstances (i.e. birth rates, mortality rates, economic trends etc.). The most important of these appear to be related to economic trends. Given the current stagflation and the subsequent downturn in the economy, it appears that the prospects for increasing black mobility rates are declining or remaining constant as the model assumes. Economic slowdowns have always affected blacks more adversely than whites, and present economic policies designed to combat inflation have certainly brought about a precipitous increase in black unemployment. The ratio of black unemployment to white unemployment has gone from 1.83 in 1960 to 2.69 in 1976 (U.S. Commission on Civil Rights:30). From this perspective, we may be over-estimating future trends in black mobility.

Another factor which may retard the movement of blacks into higher status occupations is the "tax revolt", which started with California's "proposition 13" on the state level and which has spread to the "balance the budget" movement on the federal level. The most onerous aspects of both, as far as blacks are concerned, have found their expression in President Reagan's budget cuts and tax program. The manifest concerns of this movement have been to slow down the growth of government, curb rising inflation, and to lead to subsequent economic growth. Its latent consequence may be to inhibit the growth of what is popularly known as the "black middle class." If analysts are correct in asserting that the government sector has become the prime employer of white-collar blacks, then any slow down in government growth would certaily limit the number of slots for future black employees or even mean the loss of jobs for present black employees who have opted for government positions precisely because of the more transparent discrimination practiced in the private sector.

Given these changes in American society it is paramount that the federal government not shipwreck affirmative action on the "scylla" of half-truths promoted by the new orthodoxy nor on the "charybdis" of the fiscal frugality of the state. The aspirations of blacks for an equal share of the American dream could very well depend on the decisions we make at this crucial time in our history.

LIST OF REFERENCES CITED

Beilby, William et al., 1977, "Response errors of black and nonblack males in models of inter-generational transmission of socioeconomic status." American Journal of Sociology 82(May): 1242-1288.

Blau, Peter M. and Otis Dudley Duncan, 1967, The American Occupational Structure. New York: Wiely.

Blauner, Robert, 1972, Racial Oppression in America. New York: Harper.

Duncan, Otis Dudley, 1968, "Patterns of occupational mobility among Negro men." Demography, 5(1): 11-22.

Featherman, David L. and Robert M. Hauser, 1978, Opportunity and Change. New York: Academic Press.

Freeman, Richard B. 1976, The Black Elite. New York: McGraw Hill.

Friedman, Milton and Rose Friedman, 1980, Free to Choose. New York: Harcourt, Brace, Vovanovich.

Glazer, Nathan, 1975, Affirmative Discrimination. New York: Basic Books.

Kristol, Irving, 1978, Two Cheers for Capitalism. New York: Basic Books.

Levitan, Sar A., et. al., 1975, Still A Dream. Cambridge, Mass.: Harvard University Press.

Lieberson, Stanley and Glenn Fugitt, 1967, "Negro-white occupational aims in the absence of discrimination." American Journal of Sociology, 73(2): 188-200.

Lieberson, Stanley, 1981, A Piece of the Pie. Berkeley: University of California Press.

Newman, Dorothy K. et. al., 1978, Protest, Politics, and Prosperity: Black Americans and White Institutions. New York: Pantheon.

Sowell, Thomas, 1975a, Race and Economics. New York: David McKay; 1975b, Affirmative Action Reconsidered: Was It Necessary in Academia. Washington: American Enterprise Institute.

Wilson William J., 1978, The Declining Significance of Race. Chicago: University of Chicago Press.

Mr. HAWKINS. The next witness is Prof. Duran Bell, Economics Department of the University of California at Irvine.

STATEMENT OF DURAN BELL, ECONOMICS DEPARTMENT, UNIVERSITY OF CALIFORNIA AT IRVINE

Mr. BELL. Thank you, Mr. Chairman.

I do not have a prepared statement. I apologize for that, I returned from Europe only last Friday and have not had time, as you might understand, to be fully prepared with a statement for this hearing. However, I am fully prepared in other ways to make a statement, in that affirmative action is a subject to which I have devoted considerable research time. I have given to the subcommittee staff a copy of a theoretical paper, a paper I must say that is not generally intelligible to ordinary people but which I hope might be inserted into the record.

[The document referred to above follows:]

R58—EMPLOYMENT QUOTAS FOR MINORITIES, AGAIN

(by Duran Bell, Jr.)

Social Sciences Research Reports, 58, December 1979

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I. Introduction

The issue of quotas became a major social issue during the late 1960's when civil rights groups and federal agencies sought to increase the opportunity for minority workers to enter various occupations and places of work. Often, managers of firms and union officals would deny both past and present "discrimination" when accusations arose, and they would promise to make *special* efforts to recruit minority workers. Yet, when these promises were not the prelude to effective changes in performance, neither civil rights groups nor federal agencies had the manpower to monitor the actual hiring process and identify specific barriers to minority employment.

The solution to this enforcement problem was the adoption of a *performance criterion* with which firms may be judged by their results, not by superficial protocols. One may state this criterion in the following formal form: A *prima facie* case of continued discrimination can be established against a firm if, after drawing a number of *samples* of workers from the pool of available unemployed labor, the firm consistently fails to find the proportion of minority workers that is commensurate with the population ratio. If the sample proportions selected by the firm lie below some confidence interval of the mean of sample proportions, the firm's hiring *process* may be called into question.

Unfortunately, the use of this performance criterion has required that civil rights groups and federal agencies be able to determine the relevant population proportions from which an employment goal, or "quota," is to be specified. However, when this population proportion can be identified, it is possible to encourage a non-discriminatory outcome upon the hiring process, and do so with little interference into the internal hiring processes of the firms in question.

Given the enormous potential of quotas as an administrative device, it is not surprising that an economic analysis of quotas had been emerging in the literature. Several papers have examined aspects of the question (Bell, 1971; Jackson, 1973), and many papers have made reference to quotas as part of a more general discussion of affirmative action (e.g., Landes, 1968). However, there are two papers of recent vintage that effectively extend the range of debate on the matter: a paper by Thomas Sowell (1975) and another by Finis Welch (1976).

In the next Section, we discuss these two papers in a critical mode in order to establish a foundation for the analysis that we undertake in Section IV. Additionally there is a discussion of employer versus employee models of discrimination in Section III which has a similar function in motivating an alternative model.

II. The Papers by Sowell and Welch

The paper by Sowell (1975), while treating academia as a special case, raises many of the same questions that persons in other industries may raise regarding the social value of quotas. In particular, employers in a number of industries may claim that qualified minority persons are in extremely short supply and that the administrative costs of affirmative action procedures are excessive relative to the presumed social benefit. But Sowell's central argument is that quotas are not necessary to academia, because the Civil Rights Act of 1964 was sufficient to generate the desired racial posture for higher education. The proof of this proposition is two-fold: (a) black academics earn equivalent, if not higher salaries, than white academics and, (b) a very large increase in salary is necessary to induce black academics to enter non-black institutions.

Unfortunately, Sowell's comments are not informed by the appropriate formal model; and he uses equal pay to suggest equal access. In fact, neither implies the other: Given a sufficient number of non-discriminators, minority wages will equal majority wages, even if most firms exclude minority workers. And if there are many industries, exclusion of minority workers from almost all firms in a given industry will imply a displacement of minority workers to other (less remunerative) industries, but minority workers *within* each industry may receive wages that equal majority wages.

Professor Sowell cites Kent Mommsen's (1974) data that indicate $6000 as the salary increment necessary to induce black academics in black institutions to move to non-black institutions. Sowell suggests that this reflects an "element of individual *choice* which is left out of the affirmative action syllogism that goes from 'under-representation' to 'exclusion'" (p.167). But if minority academics believe majority institutions to be racist,[1] we would expect them to require a large wage differential prior to accepting employment, especially when the offer of employment seems to be prompted by transitory federal pressures to end exclusionary practices.

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[1] A recent study of attitudes among black faculty in California institutions of higher education indicates that minority status is perceived to be a serious impediment to academic progress. See William J. McCoy (1977).

Finally, academic careers require long periods of formal training prior to initial labor market entry. Hence, if such a market appears discriminatory and/or exclusionary, there will be a strong adverse supply effect among minority persons who would otherwise undertake such training. Indeed, one would expect that this adverse supply response would be greater to occupations that require longer periods of specific formal training, ceteris paribus, thereby explaining (in part) ethnic differences in rates of entry into various training programs. Moreover, given the greater risk attached to minority academic training, a risk premium should be associated with the salaries of minority academics reflecting race-specific discount rates that apply to the real earning streams. This would be a factor in raising the salaries of non-excluded minority academics relative to the salaries of majority academics.

Hence, the shortage of qualified minority applicants, their apparent immobility and their wage parity with majority academics are not factors that support Sowell's argument, when considered from an analytical perspective. Indeed, they are more suggestive of an opposite view. But unfortunately our discussion is incomplete. An analysis of exclusionary practices as they affect careers with extensive formal training requirements is beyond the scope of this paper. Instead, we shall focus on models of labor market entry where general formal education is adequate for entry level employment.

The Welch (1976) model is a general equilibrium one- and two-sector model of employment. In the one-sector model, all firms in the economy are subjected to quota enforcement (they are "covered"), while in the two-sector model, there is an uncovered sector. Within each sector there are two types of labor, skilled and unskilled, and known distribution of minority and majority workers among the occupations.

Welch (FW) notes that "the possible preexistence of labor market discrimination complicates the analysis," and he indicates that "the taste-based treatments of Becker (1971) and Arrow (1973) offer some insight" (p. S108). However, he abandons the taste (or utility) based theories and adopts the assumption that "employers who discriminate are seen as acting as though minority workers are less productive than similarly skilled majority workers."

The use of this productivity assumption is unfortunate for it assumes away the problem. The primary objective of discrimination theory is to explain why differences in productivity do not fully account for the differences in minority-majority incomes. However, the use of the productivity assumption has unduly serious consequences for FW; he is led into error that vitiates the entire analysis: "Since in a one-sector model the distinction between physical output and its value is meaningless," (p. S108) he argues that the discount on the productivity of minority workers implies that their physical product is actually diminished in quantity.

However, if employers discount minority productivity, then they may pay wages that reflect that discount, but actual output cannot be affected by misperceptions. By assumption, the observed level of output is produced by similarly skilled majority and minority workers, so that if majority productivity is correctly perceived and minority productivity is discounted, then observed output will exceed expected output. Employers must have some explanation for the observed level of output, given the discount on minority output. There is only one possibility: The discount on minority productivity requires a compensating exaggeration of majority productivity, and the majority would (in equilibrium) be paid accordingly. By reallocating the sources of productivity, the value of output, perceived output, and actual output become indistinguishable.

In the taste-based theories of employer discrimination, minority workers are paid less than the value of marginal product, with the difference being transferred to majority workers and/or employers.[2] Aggregate output is certainly not diminished; and since the discount-on-productivity theory is not a substantive alternative to the taste-based theory, it must have the same consequences for wages and for the level of output when actual productivity is allocated among factors.

By allowing some part of minority productivity to vanish, FW makes a basic error in all of the wage calculations associated with pre- and post-quota equilibria:

> "Quotas require equal pay for equal work in covered occupations. In an associational unit consisting of one majority and r minority workers, if the perceived product of a majority worker is f_b and of a minority worker is $\alpha_b f_b$, then the wage, W_b, paid to each member of the group will be $f_b(1 + \alpha_b r)/(1 + r)$. This averaging within groups can be viewed as a simple majority-to-minority transfer" (p. S109).

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[2] See Kenneth J. Arrow, "Some Mathematical Models of Race Discrimination in the Labor Market," in A. H. Pascal (Ed.), "Racial Discrimination in Economic Life," Lexington, Mass.: Lexington Books, D.C. Heath and Co., 1972, pp. 187-203.

Since minority workers are actually as productive as majority workers, then the product of an associational unit of one majority worker and r minority workers is simply $f_b(1 + r)$! Hence, if the quota requires equal pay, the excess payments to majority workers (whose productivity had been exaggerated) will be transferred back to minority workers and all workers will receive wages equal to the value of their marginal product.

By discarding some portion of minority output, the FW model becomes one in which minority workers are inferior in fact. We would hope that this is not the intention. But unless the analysis is to be based on such a position, all of the wage rate calculations are incorrect.

While the issue of equal pay for equal work is often raised regarding the employment of women, such price discrimination is seldom the issue in minority employment. Rather, the major focus has been on problems of occupational and workplace segregation; and it is to those issues that quotas address. However, Finis Welch (FW) assumes that the economy is allocatively efficient, even prior to the quota, and dismisses the possibility of allocation distortions due to discrimination. Such a dismissal may be based upon a rather literal interpretation of basic discrimination models. In particular, Becker (1971) has shown that if we imagine a world with only one occupation, full employment of all labor and the feasibility of large white-non-white wage differentials, then utility maximizing employers who have a "distaste for associating" with non-whites will hire non-whites in the given occupation but at a lower wage rate. Misallocation is not possible, by construction.

But the spirit of Becker's analysis can certainly survive the possibility that there are many occupations, exhibiting a near continuum of human capital requirements and wage rates: Assume that there are many occupations along a human capital continuum and assume that wage rates are in equilibrium, implying (on the supply side) that for any specific occupation the wage rate is just high enough to induce the entry of the marginal entrant. Then, if a discrimination coefficient is attached to each occupation-wage, the incentives for accumulating human capital may differ by race and, hence, the allocation of occupations may differ by race.

Given any spectrum of real wage rates, one cannot safely presume the existence of an associated non-zero spectrum of discrimination coefficients that preserves the efficient allocation of persons among occupations.[3] And even if such spectra exist their historical relevance cannot be presumed. In particular, spectra that exhibit a positive relation between the size of the coefficients and realized human capital are especially likely to discourage the accumulation of human capital and distort occupational assignment. Yet, it is precisely this positive elation that seems to have prevailed in the past.[4]

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[3] If discrimination coefficients were the same for each occupation, the rate of return to human capital would be unaffected; and the incentive to enter various occupations may be unchanged. However, the racial differential in wages may be viewed as "unfair" and may have labor supply effects that vary with the level of skill if the propensity toward outrage varies with skill.

[4] See J. P. Smith and F. R. Welch, (1977), especially Table 1, p. 324.

The standard Becker model presupposes the acceptability to both majority and minority workers of wide discrepancies in wage rates on the basis of race alone. And perhaps it would be a better world were this the case. However, it is evident that wage differentials are bounded, and that wage rates tend to be attached to specific job categories within a firm. To the extent that wages do not vary on the basis of ethnicity alone, the discrimination coefficient will have the effect of excluding minority workers from occupations.

Finally, to the extent that craft labor unions have excluded minority workers and proscribed the employment of non-union labor in those occupations, minority workers have suffered a distortion of their occupational distribution relative to the perfect world. This form of discrimination can hardly be neglected in an analysis of quotas, since the first major effort to use quotas was in the construction trades (the Philadelphia Plan).

There is considerable empirical evidence attesting to the exclusion of minorities and women from a large percentage of the specific job openings in the economy. This evidence is so overwhelming as to make further comment unnecessary.[5] Nevertheless, FW presents a theoretical model, together with simulation results, that presuppose an allocatively perfect world prior to the quota. This presupposition is critical to his paper and it is regrettable that he makes it without justification.

[5] See H. M. Baron and B. Hymer, "The Negro worker in the Chicago Labor Market," in Julius Jacobson (Ed.) The Negro and the American Labor Movement," Anchor Books, Doubleday & Co., Inc., New York, 1968.

In addition, the FW model fails to capture the most essential characteristic of quotas: the provision of entry level job opportunities (and formal educational opportunities) to new labor market entrants. FW notes that "affirmative-action pressure focuses largely on remedial action which is concerned more with catching up via hiring new market entrants than with hiring earlier cohorts" (p. S133). But this essential fact cannot be captured by a model in which the size of the labor force is fixed. Given a fixed labor force, a quota can only force skilled majority workers out of the covered sector, whereas, in a growing labor force where quotas are applied to new entrants, no reallocations need take place. The quota simply alters the ethnic distribution of those who are to become skilled and unskilled (via on-the-job training).

If the world is allocatively efficient prior to the quota, then the quota may increase the cost of on-the-job training, and/or reduce the average productivity of skilled workers. The magnitude of this cost would increase as the quota ratio diverges from the optimal ratio. On the other hand, if discrimination has allocative effects, then the quota may increase economic efficiency for ratios up to the optimal ratio.

But the FW model is unable to discern the social benefits and costs of quotas because there are no new entrants. The only way to increase the percentages of skilled minority workers without reallocating skilled majority workers is via a process called "skill bumping." Skill bumping is simply a subterfuge by which employers may claim that certain minority workers are skilled, paying them accordingly, without actually changing their job assignment. By using this device employers may reduce the extent to which skilled majority workers must be shifted to the uncovered sector, and, hence, may reduce the social costs imposed by the quota. Indeed, the major policy implication of the FW paper is the implicit suggestion that employers should use skill bumping under specific conditions.

> "In fact, skill bumping can convert a program with extreme effects into a dampened one of relatively inexpensive income transfers"(p. S106).

Unfortunately, the value of, and need for, skill bumping is entirely an artifact of the assumption of a fixed labor force, and represents a solution to a false problem. A useful analysis of quotas requires a dynamic model, in which the supplies of minority and majority workers are increasing.

III. Employer Versus Employee Discrimination

The most common discrimination model employed in the literature features the employer as the essential agent whose perceptions, tastes or objectives are the source of market discrimination. This preference for employer discrimination models arises from a preference for wage differentials (the consequence of employer discrimination) relative to the occupational or workplace segregation that is associated with employee discrimination.

FW mentions employee discrimination, but adopts the employer model without comment. However, we can show on purely logical grounds the probable dominance of employee discrimination.

Let the employer's happiness be defined by a function $U = U(\Pi, R)$ where U denotes the utility function, Π is profit and $R = W/(W + B)$ is the ratio of majority workers in the workforce.[6] Then let $f(\cdot)$ be a neoclassical production function and P_w, P_b the relevant factor prices, so that the profit function is

$$\Pi = f(W,B) - P_w W - P_b B \ . \tag{3.1}$$

The factor prices associated with the maximization of $U(\cdot)$ with respect to W and B are:

$$P_w = f' + \left(\frac{R}{W}\right)(1-R) \ \frac{U_R{}^{e}}{U_\Pi} \tag{3.2}$$

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[6] By suggesting R as an argument in the utility function, we avoid indicating any particular explanation for the employer's preference for majority employees. The Becker model posits inter-racial aversion and "distaste for association" in a manner that seems to be counter intuitive to some observers. The Alexis (1973) model suggests that aversion is sufficient but not necessary to explain majority-minority wage differentials. He suggests that employers may wish to protect and/or raise the income of the majority community, and that this too is sufficient to explain observed earnings differences.

where U_R^e and U_π are the partials of U with respect to R and π and

$$P_b = f' - (\frac{R^2}{W})(\frac{U_R^e}{U_\pi}) \quad . \tag{3.3}$$

Since $\Omega^e \equiv (U_R^e/U_\pi)$ is marginal rate of substitution between the ethnic ratio and profit for the employer, it may be called the degree of racism. And it can be shown that if workers are paid according to these derived wage rates, the employer's profit will be no different from the nondiscriminatory case, unless the employer insists on sharing with majority workers the surplus generated by minority workers.

The analysis of employee discrimination is most often truncated by the immediate observation that if employers are indifferent to race, taste for discrimination among workers leads to segregation without wage differentials. However, in the real world both employers and employees manifest racial attitudes; and the question arises: Whose attitudes count?

Assume for the moment that employers are racially indifferent profit maximizers, and that majority employees require a "bribe" in order to accept association with minority employees. In particular, let the bribe be a function of the ethnic ratio, R:

$$P_w = P_w(R)$$

Further, if the bribe is just sufficient to compensate majority employees for the presence of minority workers, then the utility experienced when

$R = 1$, say, $U(P_o) = U(P_w, R=1)$ will be equal to the utility, experienced at other values of R, $U(P_w,R)$. That is,

$$U(P_o) = U(P_w,R) \text{ for all } R. \tag{3.4}$$

taking the total differential of (2.4), we obtain

$$\partial P_w/\partial R = -(U_R{}^w/U_p) \equiv -\Omega^w \tag{3.5}$$

where Ω^w is the degree of racism among workers.

Finally, given the profit function

$$\Pi = f(\cdot) - P_w(R)W - P_bB \tag{3.6}$$

the profit maximizing values of P_w and P_b can be shown to be

$$P_w = f' + (R/W)(1-R)\Omega^w \tag{3.7}$$

$$P_b = f' - R^2\Omega^w \ . \tag{3.8}$$

Several points are relevant here:

(a) If the degree of racism among employees equals that of employers ($\Omega^w = \Omega^e$), then these two parties will agree on the desired magnitude of majority wage rates. But the wage rate for minority workers will be lower than in the case of employer discrimination alone.

(b) If $\Omega^w > \Omega^e > 0$, then majority workers will demand a wage differential (as a function of R) that exceeds the differential that employers consider acceptable, and integrated workforces will not exist.

And in the segregated workforce, minority workers will suffer the wage discount associated with Ω^e.

(c) In the classical model there is only one occupation, and the assumption of full employment requires the possibility of very large majority-minority wage differentials. However, once many occupations are allowed, reasonable boundaries may be placed upon wage differentials without jeopardizing the full employment assumption. If wage differentials are bounded, then Ω^w, $\Omega^e > 0$ may require *occupational segregation*. Further, if $\Omega^w > \Omega^e > 0$, occupational and workplace segregation arise.

(d) Within the workforce P_w will vary depending upon the level of skill. If the marginal utility of income is a decreasing function of income, and if U_R^w is independent of income, then $\Omega^w = U_R^w/U_P$ will increase with skill. *Hence, if wage differentials are bounded, minority workers will be excluded from skilled occupations.*

(e) If there is a distribution of Ω among employers and among employees, then an industry, or occupation-wide, minority-majority wage differential will be established, so that the least discriminatory firms will enjoy a surplus by hiring only minority workers. The workforce will be segregated and the market wage differential will be equal to that required by the *most* discriminatory of those employers who hire minority workers. This is the conventional Becker (1971) result; the attitudes of majority workers do not influence the solution. When we consider the consequences of affirmative action and quotas, the market solution that depends upon segregation is clearly inappropriate and the relative values of Ω^w and Ω^e may determine the wage differential.

In casual labor markets, where employees and employers have no mutual attachment, employers may be willing to allow the more racist workers to quit (eliminating those for whom $\Omega^w > \Omega^e$). But if there has been an ininvestment into these workers, or some subset of them is hard to replace for any reason, then the preferences of the more discriminatory employees can be decisive. However, there is no point in the distribution of Ω^w that has obvious, a priori, relevance to the determination of the appropriate wage differential. Given any market wage differential, the difficulty that a firm would have in complying with the demands of a quota would depend, in part, on the firm's willingness to lower morale among majority workers and/or precipitate the departure of those in the upper tail of the distribution of Ω^w. It would be conservative, perhaps, to assume that the relevant value of Ω^w is not less than its median.

If workers and employers have similar distribution functions on Ω, and if the critical value of Ω^w associated with any firm is the median within that section of the working class, then Ω^w will exceed Ω^e in about half of the firms in the economy. When $\Omega^w > \Omega^e$, the employer must determine the percentage of his workforce that he is willing to lose as a result of minority entry. This percentage will depend on the distribution of Ω^w (for $\Omega^w > \Omega^e$), the relative prices of minority and majority labor, and training costs. However, Ω^w is relevant to the establishment of a equilibrium wage differential because almost all employers will have some worker to whom $\Omega^w > \Omega^e$. It would appear, then, that in the context of studying Affirmative Action, the general preference for employer-discrimination models can be justified only by the assumption that employers as a group have much greater "tastes for discrimination" than their workers, even though the exercising of those tastes is costly for employers and rewarding for employees.

IV. An Alternative Model

A. Structure of the Model

The discussion in Sections II and III, above, suggests that a useful model of employment quotas should be a dynamic model, involving employee discrimination of a form that may lead to distortions in the allocation of labor among occupations and workplace. These elements characterize the alternative model to be presented in this Section.

Suppose that minority workers have not had access to a specific occupation and that at some point in time there are W_0 majority workers within the representative firm. Since minority workers do not have experience in the occupation, they cannot displace W_0; but W_0 may discourage the entry level employment of minority workers, B, by a number of behaviors associated with employee discontent. This discontent can be mollified, however, by personnel actions that preserve the relative status of majority workers, such as promotions to positions of authority over the new employees, or special access to overtime pay. These personnel actions are the basis of a "bribe function." If $R \equiv W/L$, where $L \equiv W + B$, then the bribe function may be written

$$g(R) = f(R)(1-R)$$

where $f(R)$ is the average bribe per majority worker per unit decrease in R.

The central element of the model is the explicit introduction of labor market conditions in the form of upward sloping labor supply functions to the representative firm. Let the cost of majority workers be

$$C(W) = (\mu_W + \alpha(W-W_0))W \tag{4.1}$$

where μ_W is the base wage rate and α the slope of the supply function, given the parallel action of all other firms.[7]

The cost of hiring minority workers can be described by

$$C(B) = (\mu_b + \gamma B)B + g(R) \tag{4.2}$$

where γ is the slope of the supply function and where μ_b is the base wage rate.

The bribe price, $f(R)$, is a rather arbitrary decreasing function of R, except that it should be specified so as to permit straightforward solution procedures. We have considered a "linear" form $f(R) = \rho R^{-1}$, a quadratic form $f(R) = \rho R^{-2}$, as well as the form employed in this paper:

$$f(R) = (W/R^2)\rho = \frac{L^2}{W}\rho, \tag{4.3}$$

where ρ is a parameter that indexes the degree of racism among workers. Finally, if $(1-x)$ is the fraction of firms covered by the quota, then the costs of majority and minority workers for firms covered by the quota can be rewritten:[8]

$$C(W;x) = \left[\mu_W + \alpha(W-W_0)\right]W + \alpha(xB)W \tag{4.4}$$

$$C(B;W,x) = (\mu_b + \gamma(1-x)B)B + \rho(L^2/W)(1-R)W \tag{4.5}$$

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[7] It shall not matter that individual firms do not perceive the slope of these supply functions.

[8] The term $\alpha(xB)$ reflects the inflation of majority wages suffered by the integrating firm due to the action of segregated firms that hire W whenever the integrating firm hires B.

It will be cost effective to hire B, if $C'(B;W) \leq C'(W;x)$, or if

$$B(\gamma,W) = \frac{(\mu_w-\mu_b) + W(2\alpha-\rho) - \alpha W_o}{(2\rho-\alpha x) + 2\gamma(1-x)} > 0 \qquad (4.6)$$

If $B < B(\gamma,W)$, then the firm hires only B until $B = B(\gamma,W)$. Thereafter, B and W are hired in a ratio, or natural quota:

$$r^* \equiv \frac{\partial B(\gamma,W)}{\partial W} = (2\alpha-\rho)/D \qquad (4.7)$$

where $D \equiv (2\rho-\alpha x) + 2\gamma(1-x)$.

B. The Natural Quota

The natural quota, r^*, is an indirect reflection of the availabilities of qualified majority and minority workers, whereas the governmentally designated quota, r, is usually determined by direct observation of population ratios. If $r^* > 0$, the firm's expansion path may have the shape shown in the figure, below. The firm initially responds to the tightness of the majority labor market by hiring only B, then when $B = B(\gamma,W_c)$ it hires along the path, r^*.

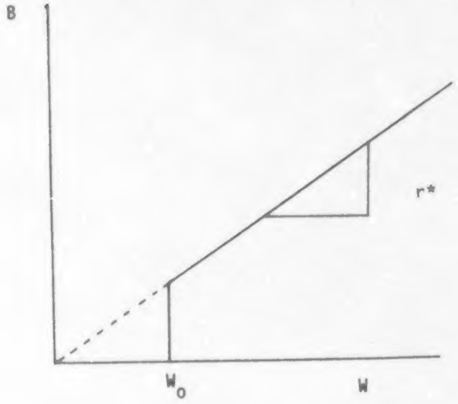

Figure 1: Expansion Path of An Integrating Firm

In order for r* to be positive, we require[9] that $2\alpha > \rho$. Hence, if the bribe function is not too steep relative to the slope of the majority supply function, it will be profitable for firms to integrate at some rate r*. The size of the natural quota increases with α and decreases with γ, as one would expect, suggesting that federal enforcement of quotas will be more effective when potential entry level majority workers are scarce and minority workers are relatively abundant.

The size of r* will be affected by (1-x), the coverage rate. Since $\partial r^*/\partial x = (r^*/D)(2\gamma+\alpha) > 0$, increases in (1-x) decrease r*. That is, the natural rate of growth in minority participation in the representative firms falls as the coverage rate increases. On the other hand, the economy wide (or occupation wide) effectiveness of a quota system increases with the coverage rate. This is seen by noting that $(1-x)r^*$ increases with $(1-x)$. Hence, the best quota system has universal coverage with modest expectations for each firm.

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[9] Additionally, r* is well defined for all x only when $2\rho > \alpha$. When the condition is not satisfied (given $2\alpha > \rho$), then r* is unbounded. That is, hire only B indefinitely.

Broad coverage also has the desirable effect of reducing the options available to those employees who would seek to avoid working in a peer relationship with minority workers. With broad coverage, there are simply fewer places for discontented majority workers to go, and therefore a major source of the cost (to the firm) of integrating the workforce can be eliminated. Formally, this means that ρ, the effective degree of racism, may be a decreasing function of $(1-x)$.

C. Population Ratios and Natural Quotas

Let the minority/majority ratio of potential qualified applicants[10] be denoted by L_b/L_w and assume that the labor supply elasticities from these two populations are identical. Assume further that labor markets are tight and that entry level wages were initially equal, $\mu_w = \mu_b$.

Then, it follows that when coverage is universal, $r^* = (\alpha/\gamma) = L_b/L_w$; and the natural quota is identical to the "naive" quota, r, that considers population ratios only. This is important to know, because it provides us with the basis for a heuristic method of estimating r^*:

a) If coverage is less than universal $(x > 0)$, then the natural quota will exceed the naive quota, $r^* > r$.

b) If the minority supply elasticity is greater than the majority supply elasticity, $\gamma L_b < \alpha L_w$, then $r^* > r$.

[10] Note that in this discussion of quotas, minority workers do not receive "preferential" treatment. Instead, the quota enforces the expected ethnic ratio associated with a non-discriminatory policy.

c) If majority workers demand status maintaining advantages, $\rho > 0$, then $r^* < r$.

d) Finally, if there is an excess supply of majority workers at the going wage, $\alpha = 0$, then $r^* = 0$.

Hence, the factors determining the relative values of r^* and r depend on the state of the economy, the coverage rate, supply elasticity for specific occupations, and the degree of racism.

D. Differential Performance of Covered and Non-Covered Firms

If the quota does not exceed r^*, the covered firms are able to reduce their costs of production in the process of complying with the federal guidelines. But it is possible that non-covered firms (if any) in the same industry may experience even greater cost reductions than the covered firms. This may happen because the recruitment of minority workers reduces the rate of increase of majority wages, making a segregated majority workforce a better bargain than before and, because segregated firms avoid paying the bribe.

Let $D(C)$ denote the difference in labor costs between covered and non-covered firms, and assume that the labor force of each firm, $L = W + B$, grows at the same rate. Then,

$$D(C) = \left[\mu_w + \alpha(W + xB)\right]W + \left[\mu_b + \gamma(1-x)B\right]B + \rho(L^2/W)(1-W/L)W - \left[\mu_w + \alpha(W + xB)\right](W + B) \tag{4.8}$$

In order for covered firms to have a cost advantage, $D(C)$ must be negative. Now assume that almost no one is covered, $x \simeq 1$, and that

$\mu_b = \mu_w$, the equation (4.8) simplifies to

$$D(C;x = 1) = BL(\rho - \alpha) \tag{4.9}$$

which is less than zero when $\alpha > \rho$. But if $x \approx 0$ (nearly complete coverage), we have

$$D(C;x = 0) = B\left[\rho L + B\gamma - \alpha W\right] < 0, \tag{4.10}$$

provided that

$$\frac{B}{W} \le \frac{\alpha - \rho}{\gamma + \rho} \equiv \hat{r} . \tag{4.11}$$

But note that (given the asumptions of this section) $r^* = (2\alpha - \rho)/2(\gamma + \rho)$, so that $\hat{r} < r^*$. Hence, if a small subset of firms is not covered, the natural quota will lead to competitive disadvantage to covered firms.

The relative advantage of being in the non-covered sector is a function of $(1-x)$:

$$\frac{\partial D(C)}{\partial(1-x)} = \left[B^2(\alpha+\gamma)\right] .$$

So, if we place $D(C)/B^2$ on the ordinate as a function of $(1-x)$, as in Figure 2, we see that when coverage exceeds some value, non-covered

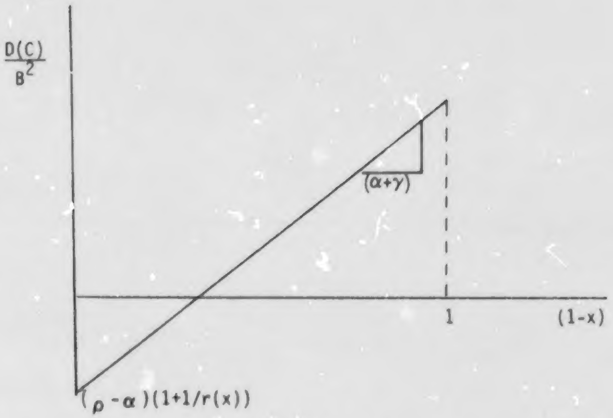

Figure 2: Relative Advantage of Uncovered Firms

firms have lower costs of production than covered firms. The quota that just preserves the competitive balance between covered and non-covered firms is

$$r(x) = \frac{\alpha - \rho}{(\gamma+\rho) - x(\alpha+\gamma)} \, . \tag{4.12}$$

This (equilibrium) quota increases with decreases in the coverage rate until $(1-x) = (\alpha-\rho)/(\alpha+\gamma)$, at which point any positive value of r is relatively advantageous to covered firms. Moreover, as ρ approaches the value of α, ceteris paribus, the equilibrium quota will be smaller. These observations suggest that when complete coverage cannot be obtained, then only modest levels of coverage, $(1-x) \le (\alpha-\rho)/(\alpha+\gamma)$, may be consistent with preserving the viability of covered firms.

E. Enforcement of $r > r^*$

Until this point we have been concerned with the problems of estimating and enforcing r^*. Since r^* is a cost minimizing employment ratio, one would expect enforcement to be unnecessary, but we have suggested that the required bribe to majority workers may decline with coverage, in such a way that r^* is cost minimizing only if coverage is enforced. Secondly, individual firms may not be aware of the supply functions. For each firm, the wage rate may be independent of its own behavior, while the collective action of all firms may have important wage consequences. Hence, firms may act as though $\alpha = 0$, unless coerced by civil rights agencies to follow r^*. (The quota becomes a mechanism by which a costly atomistic employment process can be converted into a socially optimal process.) And finally, segregated majority firms may enjoy inordinate benefits from the integrating activity of other firms, so that the enforcement of complete coverage will be necessary in order to obtain economy-wide desegregation of occupations.

However, the restriction of r to r^* may be subject to criticism in that r^* is reduced by $\rho > 0$ and by $\alpha = 0$, so that adhering to r^* leads to a policy in which minority workers are "last hired and first fired." What happens, then, when $r > r^*$?

Given a quota of size $r = L_b/L_w$, assume that supply elasticities of the two groups are identical, so that $\alpha/\gamma = L_b/L_w$. Then, given universal coverage, $r > r^*$, if $\rho > 0$.

Assume that $\rho > 0$, $\mu_w = \mu_b$, $W_0 = 0$, $x = 0$. Then the quota, $r = L_b/L_w = \alpha/\gamma$, will reduce the costs of production, relative to the pre-quota situation, by an amount equal to $LB(\alpha-\rho)$ per firm. Again, we encounter the proviso, $\alpha > \rho$. And if labor markets are not tight ($\alpha = \gamma = 0$), then the quota will be costly to an extent that depends on LB. In this case the social costs of imposing a quota of size r may be positive because of the less than legitimate demands of majority workers.

On the other hand, if $\alpha / \gamma < r = L_b / L_w$, then the enforcement of r may cause minority wages to exceed majority wages (at entry level). The social cost of the quota will be $BL(\rho - \alpha) + BE$ where $E = (\gamma B - \alpha W)$ is the entry level wage differential (ignoring the bribe). This social cost is negative for some range of $E > 0$, so long as $\alpha > \rho$. This implies that society may derive net benefits from a quota, even when it gives rise to some amount of "reverse discrimination."[11] But if this form of reverse discrimination is not enforced, a quota that could lead to such discrimination is likely to require the employment of minority workers who fail to satisfy the established criteria for entry, giving rise to "reverse discrimination" of another kind. Hence, if reverse discrimination is to be avoided, quotas should not be based upon the ratio of qualified applicants unless there are reasons to believe that labor supply elasticities are similar, or unless the coverage rate (for the occupation) is low.

F. Summary

Since quotas have the effect of facilitating entry of qualified minority workers into occupations from which they have been proscribed, quotas may be useful in increasing the supply of labor to covered occupations and (when labor markets are tight) reducing the cost of production. The cost reducing strategy supplied by the quota may not be perceived by firms that operate in an atomistic context because (a) the perceived labor supply function may be infinitely elastic for each firm, even when their concerted action has an effect on wage rates; and (b) the wage-status differential required to prevent the departure of dissatisfied majority workers may be reduced when the coverage rate is high.

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[11] The above considerations ignore the increased costs of production associated with the reduction in the number of unskilled workers in the economy.

The cost minimizing expansion path of covered firms is an optimal ratio of minority/majority entrants into the firm. This ratio, r*, is called a natural quota and it differs from a quota that depends on the ratio of qualified applicants, except under specified conditions. If coverage of a given industry is incomplete, the reduction in labor costs enjoyed by non-covered firms may exceed the cost reductions of covered firms. This possibility is especially likely in the case of nearly complete coverage. Hence, the coverage rate of specific industries should be either modest or universal.

If employment discrimination has had the effect of distorting occupational assignment within the American labor force, then the corrective use of quotas, applied to new labor force entrants, is not only morally justified, but may increase economic efficiency during periods of tight labor markets. However, the quota will be costly during slack labor market periods to the extent that majority workers are effective in extracting perquisites that maintain their relative status within the racially divided labor market.

REFERENCES

Alexis, Marcus A. "A Theory of Labor Market Discrimination with Independent Utilities." A. E. R. LXIII, No. 2 (May 1973): 296-302.

Arrow, Kenneth J. "Some Mathematical Models of Race Discrimination in the Labor Market." In Racial Discrimination in Economic Life, edited by A. H. Pascal. Lexington: Lexington Books, D. C. Heath and Co., 1972.

Baron, Wm. and Hymer, B. "The Negro Worker in the Chicago Labor Market." In The Negro and the American Labor Movement, edited by Julius Jacobson. New York: Anchor Books, Doubleday & Co., Inc., 1968.

Becker, Gary. The Economics of Discrimination. Chicago: University of Chicago Press, 1971.

Bell, Duran. "Bonus, Quotas and the Employment of Black Workers." J. of Human Resources VI, No. 3 (Summer 1971): 309-320.

Jackson, Raymond. "Job Discrimination and the Use of Bonuses." Amer. J. of Economics and Sociology 32, No. 4 (October 1973): 351-366.

Landes, William M. "The Economics of Fair Employment Laws." J.P.E. 76, No. 4, Pt. 1 (July/August 1968): 507-552.

McCoy, William J. "Black Faculty in Predominantly White Colleges and Universities: Participants in a Socio-Political Structure." Unpublished Ph.D. dissertation, School of Education, University of California, Los Angeles, 1977.

Smith, J. P. and Welch, F. R. "Black-White Male Wage Ratios 1960-1970." A.E.R. 67, No. 3 (June 1977): 323-338.

Sowell, Thomas. "Affirmative Action Reconsidered: Was it Necessary in Academia?" In *Affirmative Action in Employment in Higher Education*, edited by U.S. Commission on Civil Rights. U.S. Government Printing Office, 1975.

Welch, Finis. "Employment Quotas for Minorities." J.P.E. 84, No. 4, Pt. 2 (August 1976): S105-S139.

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R56 Mitra D. Maghbouleh, Psychocultural Dimensions of Alcoholism, Witchcraft, Ethnic Relations, and Asceticism: A Comparative Study (November 1979) (Fascicles 1, 2, and 3).

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a. Duran Bell and Karin Krogius, The Implications of the Increasing Supply of Attorneys for the Practice and Practioners of Criminal Law
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R58 Duran Bell, Jr., Employment Quotas for Minorities, Again (December 1979).

Mr. **Bell.** In any case, my comments are based on a theoretical model that I have developed over the last few years, and I will try to give you a representation of it in such a way as to focus as clearly as possible on some of your salient concerns.

As an economist, I am not particularly concerned with arguing the general moral merits of affirmative action, but rather to look at the costs and incentives that may inhibit or stimulate the effectiveness of affirmative action programs. I want to know who is helped, who is hurt, and under what kinds of conditions. This is for me a technical kind of analysis that may be of value to those who wish to use it. That is, I approached the subject as a social scientist, not as a politician. As a consequence, I often fail to say things that people would like to hear. All too often, I make enemies of everyone.

Let me say first that I was pleased to hear the Governor's remarks this morning, and I would like to point out that he has stressed the importance of a strong economy to the long-term effectiveness of a training and educational program. I think the importance of a strong economy is generally recognized. A strong economy is clearly important even if blacks and other minorities continue to be last hired and first fired; for, after all, it is better to be last hired in a strong economy than unemployed in a slack economy. So if this is our option, then we, of course, would be better off with a strong economy with or without affirmative action. The question is, what will affirmative action do? My argument—and there may be some issue here—is that an affirmative action program cannot be expected to be effective except in a strong economy, and that in a weak economy it simply generates friction that may in many cases be counterproductive.

Let me give you a simple kind of scenario here that may illustrate my point.

Suppose we have a so-called tight labor market, a tight labor market for white male workers. It may be tight for other people, too, but the critical point is that it is tight for them. Then there will be a tendency for their wages to rise unless, of course, you can find some other source of labor; and a potential source of labor are those persons who have been excluded from that labor market, that is, minorities and women. Hence, if there is some way for all or a great majority of the firms in industry to bring in a new source of labor, they can benefit by reducing the upward pressure on wages of their white work force. These firms would, therefore, have their own private benefit over and above the benefit to the minority workers whom they hire.

I think this is a straightforward point. The question, though, is suppose only one firm, one company decides that it wishes to integrate its labor force, just one firm. This one firm could perhaps hire minority workers, but its own actions would not be sufficient to change the excess pressure on white wages. So white wages would continue to go up in spite of its own individual affirmative action. I hope that is clear.

In addition, as a result of their affirmative action, they may be catching flak from their own workers. Not only are white wages continuing to go up, but their own costs may go up even more because of the effort to implement affirmative action. In other words, a single firm, even in a strong economy, seeking to implement affirmative action, may find itself in the worst of both worlds—white wages continuing to go up as previously and the employer catching all sorts of difficulty from their workers as a result of an effort to apply affirmative action.

Therefore, if the Government imposes itself upon this industry and says, "all of you must adopt affirmative action," then it now becomes possible for the industry and for the firms in that industry to benefit. In other words, by imposing affirmative action goals upon the industry as a whole, the Government makes it possible for each and every firm to experience the benefits of the affirmative action process. This I think is an extremely important point, because what it says is that free enterprise left alone is not sufficient. A single firm is not able by its own actions to gain the benefits of affirmative action. It takes group-coordinated activity and, in this particular case, the Federal Government may be instrumental in that concerted effort.

Why do I want to talk about this? The reason I want to focus on this is because earlier you were discussing with the Governor the potential consequences of dismantling the Federal effort and transferring affirmative action efforts to the State. The Governor sought to assure you that the State is in good hands and will make every effort to maintain effective affirmative action mechanisms. However, I would argue that no matter how seriously people in the States, the Governor on down, seek to implement affirmative action, they are only one State of the Union, they are not the labor market, so they can impact only upon firms that happen to locate in the State. What you need is an impact upon the industry as a whole. Unless the industry is strictly a California industry, then the beneficial mechanism that I have been describing is not available to the States. Only a Federal compliance mechanism is capable of reaping the benefits that I have described. Therefore, I would like to suggest that there is no alternative to continued Federal implementation of affirmative action if we expect it to be implemented in a way that does not generate intensive opposition by the industry groups on which it is imposed.

Thank you very much.

Mr. HAWKINS. Thank you, Professor Bell.

The next witness is Mr. Henry Der, Chinese for Affirmative Action.

STATEMENT OF HENRY DER, CHINESE FOR AFFIRMATIVE ACTION

Mr. DER. Good morning. My name is Henry Der. I am the executive director of Chinese for Affirmative Action, which is a voluntary membership-supported organization dedicated to defend the civil rights of Chinese Americans and to promote equal employment opportunities for members of the Chinese-American community.

Yesterday many of us in San Francisco read the newspaper headline of "New Reagan Attack on Regulations" with a deep sense of depression and anger. Among 30 sets of Federal regulations under review, the Reagan administration is specifically targeting employment guidelines issued pursuant to the 1964 Civil

Rights Act which gave birth to affirmative action programs in the private and public sectors.

Under the guise of eliminating the inflationary cost of Federal redtape and overregulation, the Reagan administration is charting a course that will literally weaken and destroy equal opportunities for millions of racial and ethnic minority Americans.

In numerous public opinion polls taken across the country, an overwhelming majority of Americans has expressed opposition to affirmative action programs because affirmative action has mistakenly been equated with reverse discrimination against white males, rigid quota, and preferential treatment for unqualified minority candidates. In spite of this misunderstanding and opposition toward affirmative action programs, the U.S. Congress has before it the challenge to exert leadership and courage to protect the civil rights laws and regulations created during the past two decades.

The need for affirmative action programs as a temporary means to integrate Asian-Americans into all levels of America's work force, universities, and professional schools has never been greater for this fastest growing minority group in our country. According to the 1980 U.S. census, there are 3,500,636 Asian/Pacific-Americans residing in America, a 128-percent increase from 1970. Specifically, the Chinese-American population has increased by 85 percent; Filipino, 125 percent; Japanese, 18 percent; Korean, 412 percent. One out of every three Asian Americans in the country resides in California. In the city and county of San Francisco alone, Asian Americans comprise 22 percent of the total population. During the last 2 and 3 years with respect to legislation before the U.S. Congress, there has been tremendous misunderstanding about the need of affirmative action for Asian Americans. The Addabbo bill passed by Congress, Public Law 95-507, excluded Asian Americans as an economically and socially disadvantaged group from affirmative action provisions in Federal contracts. In 1980, proposed public telecommunications legislation—introduced by Congressman Lionel Van Deerlin from San Diego—excluded Asian-Americans from affirmative action provisions to increase the number of minority-owned broadcast stations. In a 1977 Southwestern University Law Review article, written by former Federal Court Judge Charles Renfrew in San Francisco, he demonstrated the ignorance that many people have about the discriminatory experiences faced by Asian-Americans in this country.

I quote from this article very briefly. It states:

> It is indisputable that during the late nineteenth century the Chinese suffered widespread discrimination in the western United States. It is often pointed out that Chinese Americans are minimally represented in the legal profession in this country. Yet is it clear that the relatively small number of Chinese attorneys results from majority prejudice? Chinese culture has traditionally respected very little the legal profession and has stressed achievement in the sciences. Given the much greater number of Chinese Americans in the fields of medicine and engineering in this country, it may be that the group's representation in the two professions is a result of cultural background and choice, rather than a product of past discrimination.

Needless to say, Chinese Americans are not particularly endowed with "physician" or "engineer" genes. Because of discriminatory practices in examination and admission requirements, Asian Americans have historically been denied entry into many different kinds of professional and graduate schools. Certainly with the introduction of affirmative action programs in law school admissions, there has not been a shortage of Asian American applicants for admission into the legal law schools and profession.

We as Asian Americans have literally had to fight the myth that we are not discriminated against in the workplace and that we are found in every sector of the work force. In an EEOC-funded study of the 40 largest private industries in the five-county San Francisco-Oakland metropolitan area, ASIAN, Inc., reviewed 1970 and 1975 EEO-1 data and found Asian employment to be less than one-half of parity in 12 of the 17 major manufacturing industries in the area, such as food products, lumber, furniture, paper, printing, petroleum, rubber, and others. In the transportation, communication, and public utilities industries, and in finance, insurance, and real estate, Asian Americans are predominantly clerical workers. Using traditional socioeconomic indicators from the 1970 U.S. Census, opponents of affirmative action frequently cite that a disproportionately high number of Asian Americans go to college, thereby attaining incomes equal, if not exceeding, those for white males. Special tabulations conducted through a U.S. Department of Labor-funded study for the five metropolitan areas where Asian Americans are concentrated reveal poor returns of income, even with increasing educational attainment, among Asian American professionals. The income of Japanese, Chinese, and Filipino males with 4 or more years of college on the average averages only 83 percent, 74 percent, and 52 percent, respectively, that of white males. These kinds of comparisons also are applicable for Asian American females, and also for Asian American males and females with fewer years of educational attainment.

During the past 15 years, affirmative action laws and regulations as enforced by Federal agencies and the courts have had a profound impact on promoting racial integration of many occupations previously closed to America's racial minorities. Executive Order 11246 has generated a reasonable standard for private employers doing business with the Federal Government to provide equal opportunities for racial minorities and women.

Many private and public employers have adopted voluntary affirmative action programs to improve their hiring and promotion of racial minorities. The Federal Government should do everything possible to encourage this trend. A decade ago, even though 25 percent of all bay area university/college students enrolled in accounting were Asian Americans, less than 2 percent of all those hired into Big Eight certified public accounting firms were Asian Americans. In 1981, the representation of Asian Americans in many of these Big Eight CPA firms ranges from 7 percent to 14 percent. Promotional goals toward partnership for Asian Americans are goals still to be met in the 1980's and 1990's.

All Americans need to realize that the resolution of an employment discrimination lawsuit does not create instant equality for affected minority groups. For the past decade, Chinese for Affirmative Action has either been personally involved or has monitored the implementation of consent decrees resulting from legal challenges by racial minority plaintiffs. From our experience, it is evident that it requires as much time, energy, and effort to implement and monitor a consent decree as it does to file and argue a lawsuit before a court of law.

Specifically, as an example, in 1973, Chinese for Affirmative Action joined with Officers for Justice, NAACP, League of United Latin American Citizens, and San Francisco NOW to file suit against the San Francisco Police Department for discriminatory hiring and promotional practices. At the time of filing the lawsuit, there were less than 5 Asian police officers out of a total police force of 1,973 officers. In 1979, all parties agreed to a 10-year consent decree with the hiring goals of 50 percent minorities and 20 percent women, plus a minimum of 29 Chinese bilingual police officers to meet the needs of those residents who do not speak the English language in San Francisco. To date, there are 112 Asian police officers in the San Francisco Police Department as a result of plaintiffs' efforts, in spite of the claim that Asians are not interested in pursuing a law enforcement career. Yet, the city is still falling behind in meeting the overall 50-percent minority hiring goal, and is currently being brought back to court for the adoption of additional remedies. Clearly, the affirmative action efforts of these civil rights groups are far from over.

In other litigation involving the union hiring of bartenders and operating engineers, Asian Americans are not entering these occupations as provided for in the court-approved consent decree. Extension to the termination date of these consent decress have been or are being sought to insure that the respective unions will hire interested, qualified Asian American applicants.

In conclusion, I would just like to state that it is the firm belief of Chinese for Affirmative Action that it does cost money to implement affirmative action programs either legally or on a voluntary basis, but this cost is well founded in order to establish a network within the private and public sector to recruit and hire minority and female applicants.

Second, it is imperative for all entities who are interested in implementing affirmative action to launch aggressive recruitment drives for qualified minority and female candidates because historically and currently, many qualified minority and female candidates have the conception because of past practices that they are unwelcome in many occupational categories and in many private industries. It is incumbent upon private and public employers to put forth a new image among minority communities.

Last, we would ask this subcommittee and your colleagues to do everything possible to oppose any proposition that would establish self-established standards for affirmative compliance. The history of affirmative action gains have been achieved because of Federal enforcement, not because of necessary goodwill by private and public employers in America.

Thank you very much.

Mr. HAWKINS. Thank you, Mr. Der.

[The prepared statement of Henry Der follows:]

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(415) 398-8212

September 10, 1981

SEP 14 1981

Mr. Edmund Cooke, Counsel
House Subcommittee on Employment Opportunities
B-346A Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Cooke:

When I testified before the House Subcommittee on Employment Opportunities, I submitted 9 pages of a written statement on August 14, 1981.

Since then, I have added 2 additional pages to said written testimony in order to make this statement more complete. I therefore would like to take this opportunity to submit for the record the enclosed final copy of a 11-page written statement.

I want to thank you again for extending me the opportunity to testify before the Subcommittee.

Best regards,

Henry Der
Executive Director

HD:ap

Final Copy

CHINESE FOR AFFIRMATIVE ACTION (CAA)
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Testimony of
Henry Der, Executive Director
Chinese for Affirmative Action
Before the
House Education and Labor Subcommittee
on Employment Opportunities
Los Angeles, California
August 14, 1981

My name is Henry Der. I am the executive director of Chinese for Affirmative Action, which is a voluntary membership-supported organization dedicated to defend the civil rights of Chinese Americans and to promote equal employment opportunities for members of the Chinese American community. Founded in 1969, Chinese for Affirmative Action has assisted hundreds of Chinese Americans who have been victims of employment discrimination. We have also negotiated with many private and public employers for the inclusion of Chinese and Asian Americans in their respective workforces.

Chinese for Affirmative Action welcomes this opportunity to testify before the House Education and Labor Subcommittee on Employmention Opportunities on the continuing need for affirmative action and remedies such as goals and timetables, quotas, recruitment plans and other forms of relief to remedy present-day discrimination and the effects of past discrimination against Asian Americans and other racial minorities in our country.

Yesterday, many of us read the newspaper headline of "New Reagan Attack on Regulations" with a deep sense of depression and anger. Among 30 sets of federal regulations under review, the Reagan administration is specifically targeting employment guidelines issued persuant to the 1964 Civil Rights Act, which gave birth to affirmative action programs in the private and public sectors. Under the guise of eliminating the "inflationary cost" of federal red tape and over-regulation, the Reagan administration is charting a course that will literally weaken and destroy equal opportunities for millions of racial and ethnic minority Americans.

In addition to these presidential initiatives to de-regulate federal agencies to benefit major businesses and corporations, there exists pending federal legislation that would strip the federal government of its ability to enforce civil rights and anti-discrimination laws. Chinese for Affirmative Action strongly opposes several legislative and administrative proposals which, if enacted, would severely threaten the future and viability of affirmative action programs in our country:

--Senator Orrin Hatch's S.J. Res. 41, a Constitutional amendment barring the enactment or enforcement of any laws which make distinctions on account of race, color, or national origin and prohibiting the use of any numerical objectives which make such distinctions.

--Congressman Robert Walker's H.R. 3466, amending the Civil Rights Act of 1964 to prohibit federal rules requiring employers to hire workers or schools to admit students on the basis of race, sex, or national origin; and to bar the use of quotas, goals or timetables.

--Congressman Paul McCloskey's proposal to revise the Executive Order governing the federal contract compliance program so as to reduce drastically the effectiveness of the program by diminishing the reporting requirements for contractors, severely limiting the authority to impose sanctions, and stripping the Secretary of Labor's decretion to issue rules and regulations or to establish thresholds and reporting procedures.

--The Department of Labor's proposed revisions of OFCCP regulations which would, among other things, reduce the number of contractors affected by raising thresholds for basic coverage and for submission of affirmative action plans, redefine the concept of underutilization, eliminate pre-award reviews, and lower standards regarding sex discrimination.

These legislative and administrative proposals, unfortunately, reflect the general public's misunderstanding and hostility towards affirmative action programs.

In numerous public opinion polls taken across the country, an overwhelming majority of Americans has expressed opposition to affirmative action programs because "affirmative action" has mistakenly been equated with "reverse discrimination against white males," "rigid quota," and "preferential treatment for 'unqualified' minority candidates." In spite of this misunderstanding and opposition towards affirmative action programs, the U.S. Congress has before it the challenge to exert leadership and courage to protect the civil rights laws and regulations created during the past two decades.

The need for affirmative action programs as a temporary means to integrate Asian Americans into all levels of America's workforce, universities, and professional schools has never been greater for this fastest growing minority group in our country. According to the 1980 U.S. Census, there are 3,500,636 Asian/Pacific Americans residing in American, a 128% increase from 1970. Specifically, the Chinese American population has increased by 85%; Filipino, 125%;

Japanese, 18%; Korean, 412%. One out of every three Asian Americans in the country resides in California. In the City and County of San Francisco alone, Asian Americans comprise 22% of the total population.

Many Americans feel that Asian Americans do not need the assistance of affirmative action programs. Two years ago, the U.S. Congress passed the Addabbo Bill, Public Law 95-507, which excluded Asian Americans as an economically and socially disadvantaged group from affirmative action provisions in federal contracts. In 1980, proposed public telecommunications legislation excluded Asian Americans from affirmative action provisions to increase the number of minority-owned broadcast stations. In a 1977 Southwestern University Law Review article challenging the inclusion of Asian Americans into affirmative action programs, former district court Judge Charles Renfrew best demonstrated the ignorance that most people have about the years of discriminatory experiences faced by Asian Americans in this country:

> The task of calculating the impact of discrimination against any group other than American Indians and blacks is likewise elusive. Focusing upon the professional achievements of Asian Americans may help to illustrate the problems of this sort of assessment. It is indisputable that during the late nineteenth century the Chinese suffered widespread discrimination in the western United States. It is often pointed out that Chinese Americans are minimally represented in the legal profession in this country. Yet is it clear that the relatively small number of Chinese attorneys results from majority prejudice? Chinese culture has traditionally respected very little the legal profession and has stressed achievement in the sciences. Given the much greater number of Chinese Americans in the fields of medicine and engineering in this country, it may be that the group's representation in the two professions is a result of cultural background and choice, rather than a product of past discrimination.

Chinese Americans are not particularly endowed with "physician" or "engineer" genes. Because of discriminatory practices in examination and admission requirements, Asian Americans have historically been denied entry into many different kinds of professional and graduate schools.

Asian Americans have literally had to fight the myth that we are not discriminated against in the workplace and that we are found in every sector of the workforce. In an EEOC-funded study of the 40 largest private industries in the five-county San Francisco/Oakland metropolitan area, ASIAN, Inc., a community-based technical assistance/research organization, reviewed 1970 and 1975 EEO-1 data and found Asian employment to be less than one-half of parity in 12 of the 17 major manufacturing industries in the area, such as food products, lumber, furniture, paper, printing, petroleum, rubber, and others. In the transportation, communication, and public utilities industries, and in finance, insurance, and real estate, Asian Americans are predominantly clerical workers. In the service industries, Asian employment is high in hotels, restaurants, and health services as food and cleaning service workers.

The San Francisco, Honolulu, Los Angeles, Chicago, and New York metropolitan areas account for more than one half of the Asian American population. The low occupational status of Asian Americans in these areas include employment as laborers, service workers, domestic workers, and farmworkers. In these low-paying occupations, the percentage of Asian workers in two to three times higher than that of white workers in the same areas.

In a similar study of public employees, utilizing EEO-4 data, ASIAN, Inc. uncovered these employment patterns among Asian local, state, and federal workers:

--low level of employment as administrators

--low to fair level of employment as professionals, but with statistically significant lower salaries relative to their white counterparts

--fair to high level of employment as clerical workers, but with significantly lower salaries relative to their white counterparts

--very low level of employment as police officers in cities, sheriffs in counties, and highway patrol officers in the State

--low to fair level of employment as professionals in county correctional agencies and very low level of employment as professional and protective service workers in State correctional agencies

--low level of employment as service/maintenance workers in city public works departments

Using traditional socio-economica indicators from the 1970 U.S. Census, opponents of affirmative action frequently cite that a disproportionately high number of Asian Americans go to college, thereby attaining incomes equal, if not exceeding, those for white males. Special tabulations conducted through a U.S. Department of Labor-funded study for the five metropolitan areas where Asian Americans are concentrated reveal poor returns of income, even with increasing educational attainment Asian American professionals. The income of Japanese, Chinese, and Filipino males with 4 or more years of college on the average of only 83%, 74%, and 52%, respectively, that of white males. For the Asian females, their income on the average was only about 44% to 53% that of white makes. Similar disparities also exist among those with lower educational attainment; among those with high school to 3 years of college, Japanese, Chinese, and Filipino male income, respectively, was about 83%, 70%, and 70% that of white males. Among those with less than a high school education, Japanese, Chinese, and Filipino male income, repectively, was about 84%, 60%, and 74% that of white males.

The myth that Asian Americans are successful self-employed businesspersons has also contributed to the mistaken belief that Asian Americans are wrongfully benefiting from affirmative action programs. Probably the only data basc that would permit an examination of this myth is the 1972 nationwide survey of minority-owned businesses conducted by the U.S. Bureau of Census. The data therein reveals that Asian firms are mostly in retail trade and selected services, and that among these firms, more than one-half are without paid employees. Retail trade for Asians is mostly in grocery stores and restaurants while selected services mostly are services such as laundries and bookkeeping services. Gross receipts per year were about $11,000 per annum for Chinese firms in selected services; $8,000 to $14,000 for Filipino American firms in retail trade; $9,000 to $12,000 for Japanese firms; and $6,000 to $12,000 for Korean firms in selected services. These are all annual receipts. The low level of gross receipts for these firms that account for most Asian American enterprises in this country cannot in any way be interpreted as economic success.

During the past 15 years, affirmative action laws and regulations, as enforced by federal agencies and the courts, have had a profound impact in promoting racial integration of many occupations previously closed to America's racial minorities. Executive Order 11246 has generated a reasonable standard for private employers doing business with the federal government to provide equal opportunities for racial minorities and women.

Many private and public employers have adopted voluntary affirmative action programs to improve their hiring and promotion of racial minorities. The federal government should do everything possible to encourage this trend. A decade ago, even though 25% of all Bay Area university/college students enrolled in accounting were Asian Americans, less than 2% of all those hired into Big Eight certified public accounting firms were Asian Americans. In 1981, the representation of Asians in many of these Big Eight CPA firms ranges from 7% to 14%. Promotional opportunities towards partnership for Asian Americans are goals still to be met.

All Americans need to realize that the resolution of an employment discrimination lawsuit does not create instant equality for affected minority groups. For the past decade, Chinese for Affirmative Action has either been personally involved or have monitored the implementation of consent decrees resulting from legal challenges by racial minority plaintiffs. From our experience, it is evident that it requires as much time, energy, and effort to implement and monitor a consent decree as it does to file and argue a lawsuit before a court of law.

Specifically, in 1973, Chinese for Affirmative Action joined with Officers for Justice, NAACP, League of United Latin American Citizens, and San Francisco NOW to file suit against the San Francisco Police Department for discriminatory hiring and promotional practices. At the time of filing the lawsuit, there were less than 5 Asian police officers out of a total police force of 1973 officers. In 1979, all parties agreed to a ten-year Consent Decree with the hiring goals of 50% minorities and 20% women, plus a minimum of 29 Chinese bilingual police officers. To date, there are 112 Asian police officers in the San Francisco Police Department as a result of plaintiffs' efforts in spite of the claim that Asians are not interested in pursuing a law enforcement career. Yet, the City is still falling behind in meeting the overall 50% minority hiring goal and is being brought back to court for the adoption of additional remedies. Clearly, the affirmative action efforts of these civil rights groups are far from over.

In other litigation involving the union hiring of bartenders and operating engineers, Asian Americans are not entering these occupations as provided for in the court-approved consent decree. Extension to the termination date of these consent decrees have been or are being sought to ensure that the respective unions will hire interested, qualified Asian American applicants.

Now is not the time to dismantle two decades of affirmative action laws and regulations when racial and ethnic minority persons, under the protection of the 1964 Civil Rights Act and Executive Order 11246 are struggling to achieve equality and justice of employment opportunities in the national workforce. It is patently unfair for the Reagan administration and opponents of affirmative action to accuse affirmative action programs as administered by various federal contract compliance agencies as contributing to the "inflationary" excesses of big government. Prior to the passage of the 1964 Civil Rights Act and issuance of Executive Order 11246, there had always been a network to hire and promote white males within the private and public sectors, but none existed for America's racial and ethnic minorities. Therefore, it has not been unreasonable for the federal government to expend public funds to enforce affirmative action laws, to seek compliance among private, federal contractors, and to promote the establishmemt of a racially integrated network to include minority applicants.

In 1980, the Office of Federal Contract Compliance Program monitored over 350,000 companies employing nearly 40 million workers at a cost of $1.26 per employee covered under the law. Major American banks have spent less than 0.01% of their gross revenues to comply with and implement affirmative action programs.

With the promises of an expanding national economy by the Reagan administration in the near future, it is imperative that every effort must be made by the U.S. congress to maintain, if not strengthen, the enforcement of our country's affirmative action laws and regulations. Congressman Pete McCloskey's proposal to abolish Executive Order 11246 and to permit employers to set their own standards for affirmative action compliance is no compliance at all. Chinese for Affirmative Action has little faith that private/public employers left to their own will promote meaningful equal opportunities for America's minority workers. It is altogether easy for an employer to readily adopt the label of "equal opportunity employer" without truely providing hiring and promotional opportunities for minority applicants and employees. The continued presence of the federal government in enforcing and implementing undiluted affirmative action laws and regulations is necessary to guarantee that racial and minority persons in America will have a future of equality in our national labor market.

Mr. HAWKINS. The next witness is Mr. Angel Manzano, Jr., representing the Mexican American Legal Defense and Educational Fund.

STATEMENT OF ANGEL MANZANO, JR., EMPLOYMENT LITIGATION, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Mr. MANZANO. I am Angel Manzano, an attorney with the Mexican-American Legal Defense and Educational Fund [MALDEF]. MALDEF is a national legal and educational organization devoted to protecting the civil rights of Mexican Americans. Currently, we have offices in San Francisco, Denver, Chicago, San Antonio, Washington, D.C., and here in Los Angeles; our primary areas of involvement include education, employment, immigration, and voting rights. Given the nature of our work, we are keenly aware of the significance of the issues before this subcommittee today and appreciate the opportunity to testify at these hearings.

Affirmative action is, quite clearly, a matter which directly or indirectly affects the life of virtually every American. Yet despite its pervasive impact, it is a concept which is widely misunderstood. Initially used by Congress in 1935 to describe remedies for unfair labor practices, the term "affirmative action" did not become part of the lexicon of civil rights until the 1960's. At that time, it was primarily used to refer to a responsibility on the part of employers and educational institutions to affirmatively seek out minorities and women in order to insure a representative applicant pool. Gradually, however, the concept has become more and more result-oriented, focusing upon the use of goals and timetables to guarantee adequate representation of minorities and females in the actual work force or student body rather than simply in the applicant pool.

It is in this latter, more result-oriented sense that I use the term "affirmative action" here today. Specifically, I use it to refer to those race- and sex-conscious measures which are designed to insure that minorities and women participate in representative numbers in all aspects of our society. These measures entail more than merely assembling a representative applicant pool; they involve active consideration of race or sex as a positive factor in decisions with respect to minority or female candidates. Additionally, these efforts have usually been accompanied by some form of numerical assessment of an employer's or educational institution's progress toward integration.

From the outset, however, we should be equally clear as to what affirmative action is not. It is not a system of inflexible quotas or other mechanical formulae designed to give preference to minority or female candidates regardless of their qualifications. Even the most stringent of judicially or administratively ordered efforts, premised upon express findings of discrimination, do not require employers or educational institutions to disregard applicants' qualifications. Similarly, affirmative action is not a series of requirements which is arbitrarily imposed upon employers and educational institutions without regard to their past history vis-a-vis minorities and women. Rather, it is fundamentally a remedy to redress the continuing effects of past discrimination. In the final analysis, affirmative action is a collection of race- and sex-conscious remedies designed to insure that otherwise fully qualified minorities are allowed to participate in those institutions in our society which have historically been closed to them.

Affirmative action has been critical in spurring the economic gains, modest though they may have been, over the last decade. Certainly the Voting Rights Act we have heard so much about in the last 6 months has been critical to minority political success. Affirmative action is equally critical to minority access to the economic arena.

I would like to focus my remarks on the question of goals and timetables. For the last decade goals and timetables have served as the cornerstone of affirmative action efforts in our society. Initially developed by the Department of Labor in the course of its efforts to insure the integration of the construction industry through the "Philadelphia Plan," goals and timetables soon were applied to all Federal contractors subject to Executive Order 11246 and were independently adopted by many public and private employers as part of their voluntary affirmative action programs.

In essence, the formulation of goals and timetables entails the development of numerical targets for particular occupational groupings within an employer's work force. These targets are designed to insure that minority and female representation within those occupational groupings reflects their availability in the local labor markets. The rationale for these targets is a straightforward one. As stated by the U.S. Supreme Court in *International Brotherhood of Teamsters* v. *United States,*

> Absent discrimination, it is ordinarily expected that nondiscriminatory hiring practices will in time result in a work force more or less representative of the racial and ethnic composition of the population in the community from which employees are hired.

It should be noted, however, that the difference between the goals to which I refer and quotas is more than merely a semantic distinction. The numerical goals utilized for affirmative action purposes are essentially flexible targets for the selection of otherwise qualified minority and female candidates. They are not rigid formulae which require the selection of protected class group members without regard to merit.

The legality of such numerical goals for minority and female employment is clear. As noted above, the Supreme Court's decisions in *Bakke, Weber,* and *Fullilove* are clear as to the legality of color-conscious remedies in both the public and private sector. Even before these decisions, the legality of goals and timetables established pursuant to Executive Order 11246 was settled by the U.S. Court of Appeals for the Third Circuit in *Contractors Association of Eastern Pennsylvania* v. *Secretary of Labor.* There, the court held that such goals did not contravene title VI or VII of the Civil Rights Act of 1964, the constitutional doctrine of separation of powers, or the Executive order itself. Additionally, in both 1969 and 1972 Congress considered and rejected legislative attempts to limit the use of goals and timetables in the Executive order program.

Beyond questions of legality, however, it is clear that goals and timetables must be retained because they play an indispensable role in insuring that affirmative action remains a workable concept. Within the framework of the Executive order program, for example, they provide the requisite certainty for prospective contractors prior to bidding as required by procurement laws; they provide a target, which if met, is a presumption of compliance with affirmative action obligations; and where they are not met, they serve as a measuring device to trigger an investigation of the overall compliance status of a contractor.

Put another way, goals and timetables are essential because, as a practical matter, they remain the primary and often the sole mechanism by which to insure that employers are held accountable in the area of affirmative action. Without them, the well-meaning will be left to flounder without any real measure of their progress toward integration while the more invidiously motivated will be allowed to evade their responsibilities by hiding behind such vague standards as good faith and best efforts. It is not difficult to understand why the Department of Labor has concluded—

> That the use of goals and timetables is the most effective means for increasing the number of women and minorities in employment from which they have previously been excluded or have not been represented in proportion to their availability.

Let me close by saying we believe there is a continued need for aggressive affirmative action efforts. We opppose any weakening of our national commitment to equal employment opportunities for minorities and women. More specifically, we oppose current proposals which would amend or alter Executive Order 11246, title VII of the Civil Rights Act of 1964 or the Federal Constitution in a manner which would undermine the gains made by minorities and women in recent years.

The problems which affirmative action was intended to remedy—prejudice and discrimination—are still very much with us, and so long as they remain, we see no reason to abandon what has, in effect, become the one workable mechanism in achieving their elimination. We would not argue that affirmative action is a simple solution or, indeed, that it is a perfect one. Undoubtedly, it has resulted in instances in which employers and educational institutions have had to contend with unrealistic bureaucratic demands. These isolated instances, however, should not lead us to lose sight of the fundamental soundness of affirmative action. In the final analysis, it has served as an effective tool in the integration of our society, and we should by no means abandon it in favor of patently less effective solutions.

Mr. HAWKINS. Thank you.

[The prepared testimony of Angel Manzano follows:]

PREPARED TESTIMONY OF ANGEL MANZANO, JR., ATTORNEY, MEXICAN-AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

My name is Angel Manzano, and I am an attorney with the Mexican American Legal Defense and Educational Fund (MALDEF). MALDEF is a national legal and educational organization devoted to protecting the civil rights of Mexican Americans. Currently, we have offices in San Francisco, Denver, Chicago, San Antonio, Washington, D.C. and here in Los Angeles; our primary areas of involvement include education, employment, immigration and voting rights. Given the nature of our work, we are keenly aware of the significance of the issues before this subcommittee today and appreciate the opportunity to testify at these hearings.

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It is in this latter, more result-oriented sense that I use the term "affirmative action" here today. Specifically, I use it to refer to those race and sex conscious measures which are designed to ensure that minorities and women participate in representative numbers in all aspects of our society. These measures entail more than merely assembling a representative applicant pool; they involve active consideration of race or sex as a positive factor in decisions with respect to minority or female candidates. Additionally, these efforts have usually been accompanied by some form of numerical assessment of an employer's or educational institution's progress toward integration.

From the outset, however, we should be equally clear as to what affirmative action is not. It is not a system of inflexible quotas or other mechanical formulae designed to give preference to minority or female candidates regardless of their qualifications. Even the most stringent of judicially or administratively ordered efforts, premised upon express findings of discrimination, do not require employers or educational institutions to disregard applicants' qualifications. Similarly, affirmative action is not a series of requirements which is arbitrarily imposed upon employers and educational institutions without regard to their past history vis-a-vis minorities and women. Rather, it is fundamentally a remedy to redress the continuing effects of past discrimination. In the final analysis, affirmative action is a collection of race and sex conscious remedies designed to ensure that otherwise fully qualified minorities are allowed to participate in those institutions in our society which have historically been closed to them.

The history of the Mexican American people clearly demonstrates the need for such remedial efforts. Indeed, the tradition of prejudice and discrimination against persons of Mexican descent is deeply-rooted throughout the Southwest. As the Supreme Court's decision in Hernandez v. Texas makes abundantly clear, systemic discrimination against Mexican Americans in the administration of justice has long been the rule. Similarly, segregation in public accomodations and facilities has also been quite commonplace.

In employment, discrimination has equally been pervasive. For example, from the 1870's until the 1960's, copper mining companies in Arizona classified laborers of Mexican origin as "Mexican labor" and paid them uniformly lower wages than those paid to their white counterparts. A 1930 study conducted in California found that jobs in which Mexican Americans tended to be employed were primarily seasonal in nature, had little potential for advancement, and were largely in undesirable locations.

Educational discrimination has also been an accepted fact of life. For example, Mexican American children, until relatively recently, were educated in separate and inferior "Mexican schools." A 1948 report by the Mexican Chamber of Commerce of Harlingen, Texas, describes one such Mexican school as characterized by broken windows, rooms without light, three inch cracks in the side of the building and loose ceilings "just about ready to fall". Additionally, public schools throughout the Southwest did little to adjust to the limited English language skills of many of their Mexican American pupils.

Affirmative action programs have served as an invaluable tool in our efforts to overcome this legacy of discrimination. For example, in a study of affirmative action in admissions at the University of California at Santa Barbara, Chicano sociologist David Leon found that in 1965, the number of blacks and Chicanos on that campus could be counted on the fingers of one hand. By the 1979-1980 fiscal year, however, 1,159 minority students, over or 7.4% of all undergraduates on that campus, had entered the institution through its special admissions program. Similarly, affirmative action programs launched in 1974 to improve the representation of Hispanics in California state employment have had significant effects. In that year, Hispanics comprised less than 5% of

California's state employees. The latest state census, however, shows that Hispanics now comprise roughly 9.1% of such state employees.

Although these gains may appear modest, their value should not be underestimated. Through mechanisms such as affirmatve action, Hispanics and other minority group members have been given a stake in this nation's societal institutions. One need only recall the violence and turmoil which rocked the inner-cities of this nation during the late 1960's to comprehend that such a stake is vital not only to the well-being of our minority communities but to the welfare of our nation as a whole.

It is equally clear, however, that we have yet to overcome the bigotry and discrimination which have been the hallmark of the Mexican Americans experience in this country. To the contrary, recent data continues to reflect the relative deprivation of Mexican Americans in our society. The United States Bureau of the Census, for example, reports that as of March, 1979, the overall unemployment rate for our nation was 6.1%; for Hispanics, it was 8.7%. For white youths, the unemployment rate was 12.5%; for Hispanic youth, it was 17.2%. In 1978, the median earnings figure for all non-Hispanic males was $12,300; for Hispanic males, it was $8,900. In that same year, the median earnings figure for all non-Hispanic females was $5,300; for Hispanic females, it was $4,700. Sadly, even today, over 20% of all Mexican Americans continue to live below the poverty level.

As these statistics make clear, the gains of the last decade, although tangible, have not been sufficient to overcome the prejudice and discrimination which continue to permeate our society. We must come to understand that a decade of remedial efforts is simply not enough to compensate for generation after generation of bigotry and deprivation.

There can, therefore, be little doubt that affirmative action must remain a viable concept in our society. Both the past and the present demonstrate an unequivocal need for race and sex conscious remedies designed to alleviate the plight of minorities and women in this country. Yet despite this clear need, affirmative action has been the subject of considerable controversy. Its detractors allege that it is inconsistent with the fundamental principles of American society; that its implementation is far too costly; and that it only results in "reverse racism" against white males. None of these arguments, however, will withstand close intellectual scrutiny.

For example, critics of affirmative action often argue that it breaks with this nation's fundamental commitment to assess individuals according to their merit rather than their racial or ethnic characteristics. Such an assertion, however, is at best naive. Initially, it fails to consider the extent to which "merit" factors in any society are invariably tied to the social order. As has been pointed out by Terry Duster, a black sociologist at the University of California at Berkeley, measures of merit have varied throughout history, and virtually without exception, they have been intrinsically connected to maintaining the position of the privileged members of the particular society.

Additionally, this preoccupation with merit assumes that our nation has historically functioned as a meritocracy. Such, of course, is far from the case. One need only take note of the influence which has long been exercised by "old boy" networks in order to understand that our society has traditionally allowed a variety of extrinsic factors to enter into employment and school admissions decisions. As Justice Blackman stated with respect to school admissions programs in his opinion in Bakke:

> "It is somewhat ironic to have us so deeply disturbed over a program where race is an element of consciousness, and yet to be aware of the fact, as we are, that institutions of higher learning...have given conceded preferences up to a point to those possessed of athletic skills, to the children of alumni, to the affluent who may bestow their largess on the institutions, and to those having connections with celebrities, the famous, and the powerful."

Indeed, the espoused concern of affirmative action's detractors with the purity of the merit system seems somewhat disingenous. Most notably, we question whether their apparent unwillingness to consider racial and ethnic characteristics is a function of dearly-held principles or merely historical convenience. One must remember that until quite recently, racial and ethnic considerations were utilized without impunity to deprive minorities of an equal share of the fruits of our society. Yet, it is only more recently, when racial and ethnic factors have been used to favor minorities, that many have found them incongruous with the American tradition.

The other arguments which have been raised against affirmative action can be refuted with even greater ease. The contention, for example, that compliance with affirmative action regulations invariably occasions exorbitant costs is quite clearly overstated. Thus, while the University of Michigan may have spent $350,000 to develop an affirmative action plan, it spent $7.2 million to comply with regulations for the handicapped. The University of Illinois, for its part, spent over one-half of a million dollars to correct a violation of the Occupational Safety and Health Act.

No one would contend that affirmative action programs are free of costs. The regulatory process inevitably results in the imposition of financial burdens upon the regulated. We submit, however, that the costs attendant to affirmative action programs are quite insignificant when one considers the societal benefits generated.

Finally, the notion that affirmative action has resulted in "reverse racism" against white males can be summarily dismissed. As has been noted by a number of reputable social scientists, it is difficult to comprehend how affirmative action has generated such reverse discrimination when, in fact, the vast majority of opportunities continue to go to white males. Moreover, while today's white males are quick to protest that they should not be penalized for the oppression wreaked upon minorities by their grandparents or the grandparents of others, they are not as quick to recognize that they continue to benefit daily from those past acts of oppression.

Critics of affirmative action have also sought to challenge its legality. The legality of race and sex conscious remedies, however, can no longer be questioned. To the contrary, in recent years, the United States Supreme Court has consistently held that such measures are both constitutionally and statutorily permissible. For example, in Regents of the University of California v. Bakke, the Court held that although Title VI of the 1964 Civil Rights Act does not permit the use of racial or ethnic quotas in the admissions policies of a state-operated medical school, the statute does permit the consideration of race or ethnicity as one of many factors in the admissions process. In United States Steelworkers v. Weber, the Supreme Court went even further, holding that racial and ethnic quotas were permissible under Title VII of the 1964 Civil Rights Act where they were used in a manner which promoted the integration of an employer's work force. Most recently, in Fullilove v. Klutznick, the Court upheld the constitutionality of a provision of the Public Works Employment Act which provided that at least 10% of federal funds granted for local public works must be used by state or local grantees to procure services or supplies from minority-owned businesses.

In short, we believe that neither policy nor legal considerations justify any curtailment of current affirmative action efforts. It is, therefore, with considerable dismay that we view the variety of proposals currently being circulated in Washington, D.C. which would effectively undermine all race and sex conscious remedies. Although ostensibly aimed at lightening the regulatory burdens imposed upon the business community, in the final analysis, these proposals would uniformly render affirmative action a hollow concept. Indeed, the common thread which runs through most of these proposals is the elimination of the most important elements of affirmative action - goals and timetables, statistical measures of compliance, and voluntary affirmative action programs.

For the last decade, goals and timetables have served as the cornerstone of affirmative action efforts in our society. Initially developed by the Department of Labor in the course of its efforts to ensure the integration of the construction industry through the "Philadelphia Plan", goals and timetables soon were applied to all federal contractors subject to Executive Order 11246 and were independently adopted by many public and private employers as part of their voluntary affirmative action programs.

In essence, the formulation of goals and timetables entails the development of numerical targets for particular occupational groupings within an employer's work force. These targets are designed to ensure that minority and female representation within those occupational groupings reflects their availability in the local labor markets. The rationale for these targets is a straightforward one. As stated by the United States Supreme Court in International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977):

> "absent discrimination, it is ordinarily expected that nondiscriminatory hiring practices will in time result in a work force more or less representative of the racial and ethnic composition of the population in the community from which employees are hired".

Id., 340, n. 20.

It should be noted, however, that the difference between the "goals" to which I refer and "quotas" is more than merely a semantic distinction. The numerical goals utilized for affirmative action purposes are essentially flexible targets for the selection of otherwise qualified minority and female candidates. They are not rigid formulae which require the selection of protected class group members without regard to merit.

The legality of such numerical goals for minority and female employment is clear. As noted above, the Supreme Court's decisions in Bakke, Weber and Fullilove are clear as to the legality of color-conscious remedies in both the public and private sector. Even before these decisions, the legality of goals and timetables established pursuant to Executive Order 11246 was settled by the United States Court of Appeals for the Third Circuit in Contractors Association of Eastern Pennsylvania v. Secretary of Labor, 442 F.2d 159, cert. denied, 404 US 854 (1971). There, the Court held that such goals did not contravene Title VI or VII of the Civil Rights Act of 1964, the constitutional doctrine of separation of powers or the Executive order itself. Additionally, in both 1969 and 1972 Congress considered and rejected legislative attempts to limit the use of goals and timetables in the Executive order program.

Beyond questions of legality, however, it is clear that goals and timetables must be retained because they play an indispensable role in ensuring that affirmative action remains a workable concept. Within the framework of the Executive order program, for example, they provide the requisite certainty for prospective contractors prior to bidding as required by procurement laws; they provide a target, which if met, is a presumption of compliance with affirmative action obligations; and where they are not met, they serve as a measuring device to trigger an investigation of the overall compliance status of a contractor.

Put another way, goals and timetables are essential because, as a practical matter, they remain, the primary and often the sole mechanism by which to ensure that employers are held accountable in the area of affirmative action. Without them, the well-meaning will be left to flounder without any real measure of their progress toward integration while the more invidiously motivated will be allowed to evade their responsibilities by hiding behind such vague standards as "good faith" and "best efforts". It is not difficult, therefore, to understand why the Department of Labor has concluded "that the use of goals and timetables is the most effective means for increasing the number of women and minorities in employment from which they have previously been excluded or have not been represented in proportion to their availability." 42 F.R. 52442 (Sept. 30, 1977) (emphasis added).

Like goals and timetables the "effects test" articulated by the United States Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), must continue to be an integral part of federal civil rights enforcement efforts. Discrimination in its most overt forms is becoming increasingly rare in our society. Rather, it now more commonly manifests itself in the form of elaborate selection criteria and procedures which bear no real relationship to actual performance. The end result, however, is unmistakably the same -- minorities and women are denied available opportunities.

Given these realities it is essential, therefore, that the effects test, with its emphasis upon the relative statistical impact of particular practices upon minorities and women, remain a vital part of our jurisprudence. To impose upon plaintiffs the burden of proving motive or intent in this era of sophisticated, covert discriminatory practices would be tantamount to repeal of many federal nondiscrimination provisions.

Additionally, we should not lose sight of the fact that the effects test considers more than the statistical impact of a given practice upon protected class groups. Even those practices which have an adverse impact upon minorities or women can be utilized where an employer can, in fact, demonstrate the practices in question bear a relationship to the responsibilities of the particular position. As such, any retreat from statistical measures of compliance would not only hinder the elimination of discriminatory policies, it would generate no real benefits for employers and the business community.

Finally, we note that if affirmative action is to remain a viable mechanism, voluntary programs must be allowed to continue effectively. To limit affirmative action efforts to those instances where a court or an administrative tribunal has made a formal finding of discrimination would only hinder its effectiveness. Essentially, such a restriction would only stifle the creativity of socially responsible employers and educational institutions while generating needless litigation and related legal proceedings.

In sum, we believe there is a continued need for aggressive affirmative action efforts. We oppose any weakening of our national commitment to equal employment opportunities for minorities and women. More specifically, we oppose current proposals which would amend or alter Executive Order 11246, Title VII of the Civil Rights Act of 1964 or the federal Constitution in a manner which would undermine the gains made by minorities and women in recent years.

The problems which affirmative action was intended to remedy -- prejudice and discrimination -- are still very much with us, and so long as they remain, we see no reason to abandon what has, in effect, become the one workable mechanism in achieving their elimination. We would not argue that affirmative action is a simple solution or, indeed, that it is a perfect one. Undoubtedly, it has resulted in instances in which employers and educational institutions have had to contend with unrealistic bureaucratic demands. These isolated instances, however, should not lead us to lose sight of the fundamental soundness of affirmative action. In the final analysis, it has served as an effective tool in the integration of our society, and we should by no means abandon it in favor of patently less effective solutions.

Mr. HAWKINS. Mr. Weiss.

Mr. WEISS. Thank you very much, Mr. Chairman. I have no questions. I want to express my appreciation to all the witnesses. I think it has been outstanding testimony and very helpful to us. Thank you.

Mr. HAWKINS. Mr. Washington.

Mr. WASHINGTON. Just one brief question of Mr. Bell. If you begin with the proposition that whatever the job pool that there should be a fairer distribution of those jobs among all facets, including minorities, do you encounter any problems?

Mr. BELL. Do I find problems with that proposition?

Mr. WASHINGTON. Yes.

Mr. BELL. No. I do not understand why you raised the question.

Mr. WASHINGTON. I was a little confused by your testimony. I did not know exactly what your point was. Clearly I do not think anyone in his right mind would oppose a beefed-up economy which creates more and more employment, but I gathered from your testimony that there was somewhat of a mild criticism of affirmative action because it could not solve all the problems.

Mr. BELL. Let me say—no. My argument is that if labor markets for majority workers are slack, then the effort to implement affirmative action is likely to give rise to considerable resistance on the part of white workers. That resistance will have an effect on the cost of production of the affected firms. Therefore, you have both the firms and the workers against you. In that kind of context, affirmative action does not fare very well.

We have had now I do not know how many years of a slack economy, at least not a strong one. These years of a relatively slow economy have just slowly eaten away at the vitals of affirmative action. We have just systematically made enemies year by year. Once the economy becomes stronger, then I believe you have a context in which affirmative action, while it may continue to be opposed by some majority workers, becomes a possible source of cost reduction to the firms. So at least you get an ally on that side. I think that is very essential to the long-term viability of the program.

So my argument then is that you cannot expect to push affirmative action programs effectively when labor markets are slack. Even today, of course, there are some labor markets that are tight. But you should look for those.

Mr. WASHINGTON. In short, you get more opposition when jobs are slack?

Mr. BELL. Yes.

Mr. WILSON. Mr. Washington, may I respond to your question? One of the things that a number of us recall in the employment history in this country are those occasions—such as during World War II, the Korean war, and other times when the economy was going full blast—when there still was no inclusion of racial minorities or women in key roles and often in menial roles in the employment picture. In the hiring of minorities, there is no such one-on-one relationship that has ever been demonstrated in the history of this country.

Mr. WASHINGTON. Would you care to comment, Mr. Oliver?

Mr. OLIVER. Well, while I am not sure I would agree with everything you say, we could show you the trends in the last 20 years, and we would see that pattern that you say does not exist.

Mr. BELL. Which pattern is that?

Mr. OLIVER. The pattern that when we do have a healthy economy, blacks tend to be incorporated in the labor force at a greater rate.

Mr. BELL. Could I make that point?

Mr. OLIVER. Your argument was historically a particular argument, prior to 1952; from 1952 on, it has been a pretty consistent rate. During a healthy economy, blacks get absorbed; in an unhealthy economy, blacks drop out.

Mr. BELL. Can I make one final comment?

My argument, though, is that that is not enough; that blacks becoming absorbed in a strong economy simply means that they are the last hired and the first fired. They get the jobs, but they get the last jobs. So what you need is both a strong economy and affirmative action. The purpose is to be able to lift blacks and other minorities not simply from a job at the bottom but to a better job in the middle or the top.

I am arguing the importance of the coincidence of both affirmative action and a strong labor market.

Mr. WASHINGTON. You are not saying if you do not have a strong economy, you should abandon affirmative action programs? You are not saying that, are you?

Mr. BELL. Something dangerously close to that.

Mr. WASHINGTON. That is why I tried to establish my basic premise about whatever the pool, there should be a fair distribution of jobs.

Mr. Oliver.

Mr. OLIVER. I would like to respond to your comments in one way. You seem to put a lot of emphasis on the labor market. The problem we are having now is that the labor market tends to get expanded. Where it used to be the regional labor market, we are talking now about a national labor market. Now we are talking about an international labor market. When Ford says we are going to make the world car, we do not make the world car. It is made in Japan or in Brazil. So that is the kind of problem that affirmative action has a difficult time addressing, but on the one hand we need to address those kinds of issues, too.

For example, the Humphrey-Hawkins bill, the original bill tried to get at some of those things. These people are going to go off to another country. We need jobs. Those kinds of remedies also have to be included.

Mr. HAWKINS. If you would yield, Mr. Washington, I am not really too much disturbed. I was somewhat confused with Mr. Bell's relation of it, but not disappointed. Let me say I do not see a strong disagreement. I think we have tried to deal with this problem for a long time. In the formulation of a full-employment approach, I think we attempted to deal with it within the context of full employment and fair employment being intertwined and going along with each other. It has always been my contention—which perhaps comes very close to saying what you said, Mr. Bell—that if affirmative action or if equal employment opportunities means taking jobs away from another group, then you lose the support in order to achieve the type of economy that we want. I think the thing that probably disturbed us a little—but again I think there is some accommodation—was that if we abandon the concept of affirmative action in a slack economy, do we abandon it in times of adversity in the economy? I think that perhaps gets us down to the point where it is controversial and where we need to get some strategy.

I think those of us who are in the political field deviate a little from those of you who are in the scientific or academic field, and attempt to be politicians. Today, the administration is attempting to have a stagnant economy and at the same time do away with affirmative action. The strategy that some of us have employed to get the ally—and this is purely political and I think you did refer to who becomes your ally at that time—is to say to those who ordinarily have been your allies are those supporting affirmative action. Let us say that you who represent the labor movement, if you do not work with us to get full employment, then we insist that as jobs become fewer, that you share those jobs with us. There should be equality of sacrifice. We should try to attempt, through political means, to force them to become allies and to obtain more jobs so that there will be a fair distribution so that we do not have to share or take jobs from one group or another.

As I say, we become in a sense politicians and not economists in so dealing with it. On that basis—and I think it is purely a basis of expediency—there are some of us who feel that we have to press on with affirmative action even in these times. Your point still remains true that there will be fewer jobs, and if you believe that you are going to be successful in taking jobs from one group, transferring them to another, that that is a purely ineffective way and may doom us to failure.

I think we still, in a strict sense, have to insist that if there are to be fewer jobs, there must be equality of sacrifice, and that means continuing the efforts in the field of affirmative action.

I am not disturbed. I think your statement rendered you as a strong supporter of affirmative action. I do not disagree with your formulation too greatly.

We will have to be politicians, Mr. Washington, I suppose.

Mr. **WASHINGTON**. I agree with you, Mr. Chairman.

Mr. **HAWKINS**. Fight like hell for affirmative action, regardless.

Mr. **WASHINGTON**. I yield.

Mr. **HAWKINS**. Thank you.

Any further questions?

Again, I have to agree with Mr. Weiss that it has been an excellent panel. I regret that time did not permit us to even develop some of the thoughts expressed. The record will be kept open for any additional views. I think you, Mr. Bell, indicated that you did not have time to prepare a statement. Perhaps you will include some of the discussion that has been so relevant to this discussion so that we can clarify the issue.

Thank you.

Mr. **HAWKINS**. The next panel will consist of Mr. Michael Ishikawa, affirmative action compliance officer; Mr. Steven Faustina, and Mr. Peter Phillipes of the Levi Strauss Co., and Mr. Ollie Hadley of the Los Angeles Basin Equal Opportunity League.

May I indicate the reason we took the last panel rather than the next to the last was there were several members of this panel who happen to be from out of the city and who have planes to catch. We didn't want them to miss those planes. We considered that the two previous witnesses of the other panel are in the city and have not indicated to us that they have planes to catch. They have the freeway to fight but not planes to catch. It was just out of that sense of fairness that we rendered this judgment and called the last panel.

I think if we confine the remarks as briefly as possible to the 5 minutes which we hope to cover and to have the full statements entered in the record, and if you don't have prepared statements, to keep the record open so that any additional statement or supporting evidence can be presented in the record that that will satisfy, I think, all of the views expressed.

STATEMENT OF OLLIE HADLEY, PRESIDENT, LOS ANGELES BASIN EQUAL OPPORTUNITY LEAGUE, XEROX MEDICAL SYSTEMS

Mr. **HADLEY**. Mr. Chairman, members of the subcommittee, I am Ollie Hadley, president of Ollie Hadley Associates consulting firm. However, I am here today representing the Los Angeles Basic Equal Opportunity League, whose members represent the mainstream of area business enterprises including aerospace, banking, motion picture, automotive, electronic, insurance, and many other industries.

The purpose of our LABEOL organization is furthering and fostering in business and industry the tenets of equal employment opportunity and affirmative action.

It is clearly evident that for the first time in many years Federal equal employment opportunity and affirmative action processes are under serious scrutiny and challenge. That is why the president of our organization, Theresa Kelley, directed a letter to the President's counsel, Edwin Meese, within days of the inauguration. Please let me share the majority of its contents with this important committee:

> The Los Angeles Basin Equal Opportunity League is a prominent, well-regarded organization situated in the President's own home State of California and is comprised of a representative cross-section on American industry and business. The purpose of this correspondence is to highlight our concern that the merit, affirmative gains achieved by minorities and women as a result of efforts of past Republican and Democratic administrations may be severely eroded during the next 4 years.
>
> The new administration should hopefully soon decide that vital government EEO programs must not be watered down or stripped of jurisdictional authority so as to render them powerless to deal with pervasive problems of racial and sex discrimination. Notwithstanding, please know that many of the private corporations we represent feel victimized relative to overregulation by certain Federal agencies and that much of the paper requirements, especially pertaining to equal opportunity and affirmative action, is burdensome, counterproductive, and even unnecessary. * * *
>
> Expressly, LABEOL is presenting the subsequent recommendations for consideration by the transition team and the new administration:
>
> 1. Executive Order 11246 jurisdiction be retained without being merged at this time with the title VII agency.
> 2. The status of the Office Federal contract compliance programs be upgraded, by having its director report and be accountable only to the Labor Department Secretary.
> 3. OFCCP continue to have high priority activities and to maintain effective enforcement powers in dealing with contractor recalcitrance or complacency. The establishment of goals and timetables should continue to be the means for overcoming female and minority underutilization.
> 4. There needs to be a drastic reduction of paper requirements imposed on Federal contractors without taking away OFCCP authority to handle both affirmative action and discrimination issues, . . .
> 5. Equal opportunity specialist should be disciplined to stay within jurisdictional bounds and never be permitted to exceed the specified requirements of relevant laws, orders and regulations.
> 6. The recent reorganization of the Equal Employment Opportunity Commission, which has dramatically reduced longstanding case backlog and has significantly shortened complaint processing, should remain in process.

That concludes the letter except for the brief salutation.

In recent years, particularly since the contract compliance reorganization of 1978 there has been increasing concern that the program has not been "cost-effective" and that affirmative action requirements has become more "burdensome" than ever before.

American industry is very willing to spend funds productively. Over the last 20 years, thousands of companies have made and met goals and commitments, exceeding Federal expectations. Moreover the measurable benefits derived from affirmative action taken in the workplace have caused attendant costs to be, for the most part, disregarded. Throughout the Nation, the tangible result is a more discrimination-free recruitment and employment environment.

As decisions are contemplated which affect that status of Federal EEO programs, for the present and future, the Los Angeles Basin Equal Opportunity League urges both the administration and Congress to seek timely counsel from our highly knowledgeable and experienced organization.

Thank you for this opportunity to represent LABEOL at this hearing.

Mr. HAWKINS. Thank you, Mr. Hadley.

Mr. Faustina.

STATEMENT OF STEVEN FAUSTINA, MANAGER OF CONTRACT COMPLIANCE, LEVI STRAUSS & CO., ACCOMPANIED BY PETER PHILLIPES, ASSISTANT GENERAL COUNSEL

Mr. FAUSTINA. Thank you very much. I believe I am one of the flight catchers. Given the status of the LA freeways and the air controllers' strike, we are extremely thankful for your moving the agenda.

I am Steven A. Faustina. I am manager of contract compliance for Levi Strauss & Co. and in that position am responsible for the corporation's compliance with Federal equal employment opportunity requirements. I am accompanied by Peter M. Phillipes, assistant general counsel of Levi Strauss & Co.

Levi Strauss & Co. is the world's largest manufacturer of branded apparel, with major production and distribution facilities in 18 States. Our sales volume in 1980 was in excess of $2.8 billion and our domestic work force numbers in excess of 35,000 persons.

Levi Strauss & Co., as a Federal contractor, has a legal obligation to maintain an effective affirmative action program. Although this legal obligation presents a compelling argument for the acceptance of affirmative action in the employment of minorities, women and handicapped persons, at Levi Strauss & Co. we believe that our strongest motivation is the moral obligation to do so. In other words, it is the right thing to do.

The past 131 years of our history reflects this corporate commitment to be fair and responsive to human needs—whether it be in relations with employees, in hiring practices, in advancement opportunities and benefit plans, or in the company's continuing efforts to improve the quality of life in the communities in which we operate. Our interest in equal employment opportunity goes beyond, as I pointed out, the legal requirement. In fact, we like to say that if the Executive order were rescinded tomorrow, or tonight, that we would continue with our vigorous affirmative action efforts.

Our interest is not, as some may suspect, a pretext for good public relations. It is simply our belief that attentiveness to all the social dimensions of business activity is as important as attentiveness to financial requirements.

This is not to say that we do not seek a reduction in governmental regulation, for we do. We believe that the current overabundance of bureaucratic detail makes the concept of affirmative action less salable and often frustrating to private industry. In our own case, less restrictive Government regulation would make available a significant amount of our corporate resources for more productive means of achieving our EEO goals. In 1980, we estimate that $200,000 was spent on administrative costs involved specifically with recordkeeping and external compliance reporting. That is on what I like to call paper affirmative action. This kind of affirmative action does not result in more minorities or women getting jobs, being promoted or trained for advancement, which I believe was the original intention of the Executive order and one which Levi Strauss & Co. thoroughly endorses.

I would like to share with you some of the management tools that we have voluntarily undertaken at Levi Strauss & Co. to make affirmative action a reality instead of merely a paper exercise in the satisfaction of Government regulations.

Our affirmative action program begins with direction from and review by the board of directors. The board has accepted the responsibility of considering the impact of corporate activities on the interests and expectations of minorities, women, and other protected classes and assuring that appropriate policies and procedures are developed and implemented to guarantee compliance with both statutory and in-house requirements.

For EEO to become an integral part of the corporate agenda, the chief executive officer must demonstrate EEO leadership. At Levi Strauss & Co., the CEO has created an affirmative action council composed of key senior management officials. The council performs the following tasks:

One: Review of existing EEO programs and activities.

Two: Providing advice and counsel to the CEO.

Three: Recommending changes in EEO policy or hiring practices.

The AA council has been an effective management tool because it has a clear purpose, specific mission and objectives, strong leadership, adequate staff support, but most importantly, because it has the support of the CEO.

The purpose of the Executive order was to encourage corporations to take a proactive position on EEO. Today, however, many companies often act only in response to a threat of Government action or private litigation. At Levi Strauss & Co. we still try to take the same proactive approach to EEO that we have always followed.

Today this proactive stance can be seen in our management structure. The contract compliance section of our corporate EEO department has established an internal auditing function that audits our field locations and those of our subsidiaries for EEO/AAP compliance. These audits are in addition to any scheduled by the OFCCP. Their purpose is to identify problem areas and to counsel and assist facility managers.

Finally—what we feel is one of our most important management approaches—as part of our management approach to EEO, we have included EEO performance as part of overall management accountability. AA plans submitted for senior management review must contain significant and realistic goals and objectives. Middle managers who participate in their development know they will be responsible for EEO performance and their annual performance appraisals and bonuses will be affected by their accomplishments in this area. Our goal-setting procedures are designed to achieve realistic results rather than goals following from the application of formula.

Voluntarily undertaken, critical assessments should be the foundation of realistic planning for EEO/AA.

The third is economic—EEO goals and strategies have been incorporated within the organization's total management program not because of Government regulations or court orders, but because it makes good business sense. And as we have said before—it is the right thing to do.

To sum up, as an alternative to inflexible regulations, we would recommend that businesses consider the following strategy:

One: Add EEO performance objectives for management without abandoning profit maximization as the primary management responsibility. An unprofitable or economically ailing business is in no position to achieve EEO goals. Only a healthy business can generate the resources and provide the management skills required to mount and sustain significant EEO programs.

Two: Utilize realistic internal EEO planning to establish goals, policies, and action programs that are uniquely suited to the requirements of the particular corporation and are not the result of externally mandated, often inflexible.

Unless this EEO philosophy and approach gains wide acceptance we fear we will continue to be overburdened by governmental regulation. I believe that many corporations are beginning to understand the value to business and its host society of exercising private options before they become public imperatives. We would hope that the Congress will provide business with the encouragement needed to move in that direction.

We appreciate the opportunity to appear before you today and will be pleased to answer any questions you may have for us.

Mr. Hawkins. Mr. Phillipes, do you have anything to add?

Mr. Phillipes. No. I believe Mr. Faustina's statement covers our corporate position.

Mr. Hawkins. Are there any questions the members would like to ask of Mr. Faustina or Mr. Phillipes? We could do so at this point and then dismiss them.

[No response.]

Mr. Hawkins. Mr. Ishikawa, I understand, is from the city. I don't expect him to catch a plane this afternoon. We will get to you later on, Mr. Ishikawa.

I would like to ask this question, Mr. Faustina. Since Levi Strauss operates in 18 States and internationally, but specifically with respect to your operation in 18 States, let us assume a hypothetical situation—that affirmative action is abandoned and the EEOC and OFCCP programs are reduced substantially and that the States primarily have the responsibility to operate much stronger programs. My last reading of the situation was that in at least a majority of the States, the State laws are much stronger or will be much stronger than the Federal law at that time. Would the situation be improved for your operations, since you do operate in such a large number of States, to begin to address the requirements of State laws as opposed to a Federal law which does provide for allowing the States to operate—deferring the compliance procedure to the States rather than the Federal Government? Just what would be the impact on a company such as yours having to meet the requirements in that number of States which may be much stricter than the Federal requirements?

Mr. Faustina. At the present time none of the States in which we operate require annual or periodic reporting or submission of written affirmative action programs, nor do any of them have any audit or compliance functions.

If that were to be the case, where we would have to deal with 18 separate enforcement agencies, yes, undoubtedly our workload and paper requirements would increase dramatically. Unfortunately, or fortunately, most of the 18 States within which we have facilities are throughout the South. I am afraid that those States would not, under any circumstance, be undertaking any rigorous affirmative action effort. We like to pride ourselves in the fact that we have been a force in many of the communities in the South of integrating the work force and being a positive effort for equal opportunities in the communities.

I do not anticipate if the States do pick up the slack of paper affirmative action that our workload would increase.

Mr. **Phillipes.** I might add to that I think from the standpoint of any large national company, it is to our advantage to have a uniform national rule. It is very difficult, I know from my standpoint, having to worry about 18 different sets of State rules. I think our point is we would rather have the Federal program but we would rather have a Federal program that isn't quite as cumbersome.

We are doing a lot of the wheel-spinning. We are spending an awful lot of time with paper. I think there is an attitude in some of the EEO and OFCCP bureaucracies that when an employer comes in, they are immediately suspect regardless of the record that you may bring to a particular proceeding. It is that kind of problem we see in the system, not the fact that we would like the Federal Government to turn it back to the States.

Mr. **Hawkins.** Outside of the paperwork, do you see any other real burdensome provision in the Federal law that you would feel should be abandoned? I think all of us recognize that there is a tremendous amount of paperwork involved and we would like to deal with it, but many of the proposals go far beyond mere paperwork and go to the very heart of the program.

Mr. **Phillipes.** I think our problem is not so much with the law but with the administration of the law.

Mr. **Hawkins.** Any further questions?

[No response.]

Mr. **Hawkins.** Thank you. May I express the appreciation of the subcommittee that you have taken the time to state the views of Levi Strauss & Co., and we are most anxious to get the views of the business community. I think you are to be commended for coming forward and presenting yours in a very articulate and very definitive way. We appreciate it.

Mr. **Faustina.** Thank you very much.

Mr. **Hawkins.** Mr. Ishikawa, in this rather hectic manner we get back to you.

STATEMENT OF MICHAEL ISHIKAWA, AFFIRMATIVE ACTION COMPLIANCE OFFICER, COUNTY OF LOS ANGELES

Mr. **Ishikawa.** Thank you, Mr. Chairman.

Good afternoon. First of all, I would like to bring greetings from Ken Neehan, supervisor of Los Angeles County and the rest of the members of the board to you and your committee.

I do have a prepared statement, but I would like to take this opportunity to share some views and some reactions that I think I would not like to pass up. It is a rare opportunity to meet with the committee like this to discuss something that I feel is very important today.

The particular area of concern that I have is the concern of cost effectiveness of affirmative action and its implementation. I think it is important to note that affirmative action programs have been defined both personally and by others as something of a preventive program approach. Maybe compared with preventive health.

The concerns that I have as an affirmative action officer with a large jurisdiction is the fact that the implementation, that I think the previous speaker mentioned, has been one that has not been cost effective. The law needs to remain. The requirement needs to be there. Without the two we will not have what we know as equal employment opportunity. I think the problems have been that affirmative action programs have not been cost effective because there has been a lack of training, there has been a lack of standards, and a lack of common interpretation as to what the regulations provide for, both at the local level, the State level, and even at the Federal level.

I think it is particularly important that this particular area has probably exposed affirmative action programs most to those who would be opposed to any form of affirmative action or equal employment opportunity.

With regard to its impact on the merit system, I think that the impact has been immeasurable. Affirmative action programs, to quote the Los Angeles County fire chief, has probably brought the fire department's merit systems program into the twentieth century. Affirmative action programs have questioned and have challenged the standards that have been in operation for the past years. So I feel that affirmative action programs for the most part are extremely important with regard to changing and to challenging and to bringing up to date, in many cases, the inadequate merit systems, and programs that we have.

The last thing I would like to say is the fact that I believe that the comments made by the previous panel are probably most appropriate to what we are faced with today. Affirmative action programs in their infancy, back in the early 1970's, was accepted as long as there was a surplus, as long as there was a healthy enough economy that provided enough jobs and had enough positions in college campuses, et cetera.

As we embark in the 1980's, that is not the case. I believe that the commitment, the application to affirmative action is now being tested as far as whether or not those limited positions, both in the colleges as well as in the workplace, are going to be afforded to all members of our society. I do believe that without the principles and without the laws that dictate and provide for affirmative action and equal employment opportunity, we will see a result in which minorities and women will not participate. They will not be a part of the system despite whatever the economic situations are that we have.

So I believe that regardless of what the economic situations are that we are faced with today, we need affirmative action programs the most.

Again, thank you for your invitation to speak before the committee. I appreciate the opportunity.

[The statement submitted by Michael Ishikawa follows:]

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE
COUNTY OF LOS ANGELES

500 West Temple Street, Room 780
Hall of Administration
Los Angeles, California 90012
974-1025

MICHAEL H. ISHIKAWA JR.
AFFIRMATIVE ACTION COMPLIANCE OFFICER

ROBERT A. ARIAS
CHIEF DEPUTY

MEMBERS OF THE BOARD

PETER F. SCHABARUM
KENNETH HAHN
EDMUND D. EDELMAN
DEANE DANA
MICHAEL D. ANTONOVICH

August 12, 1981

The Honorable Augustus F. Hawkins
Chairman, Committee on Education and Labor
Subcommittee on Employment Opportunities
B-346A Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Hawkins:

THE "COST-EFFECTIVENESS" OF THE IMPOSITION OF
AFFIRMATIVE ACTION REQUIREMENTS ON EMPLOYERS

The Los Angeles County Office of Affirmative Action Compliance, established as an independent department by the Board of Supervisors in 1976, welcomes the opportunity to speak before your subcommittee. As the Compliance Officer for the County, I am impressed with the scope of today's agenda, and hope that my testimony will be of assistance to you and the members of the subcommittee.

With the active support of the Board of Supervisors, the Office of Affirmative Action Compliance has established an aggressive posture in implementing equal employment opportunities and ensuring that County managers and contractors respect and support the civil rights of our employees and the public.

The uniqueness of the Compliance Office has allowed it to pursue activities in areas that are normally overlooked, such as targeted minority recruitment programs, special assistance on oral interviews, management training programs, monitoring of transfers and promotions, and contract compliance reviews. This is in addition to maintaining the County's Affirmative Action Plan consistent with Federal and State requirements. In the past, traditional affirmative action efforts have been limited to discrimination and grievance functions while neglecting equally important peripheral activities that develop a stronger infrastructure to compliance programs.

To place a dollar value on the cost effectiveness of implementing affirmative action programs within the private or public sector may be difficult to adequately demonstrate, but by providing members of protected groups with equitable access to both jobs and services, management would find that less time would eventually be spent on defending an inadequate system. Reality, though, dictates that appropriate administrative action be taken against managers that have continued past practices that discriminate against members of protected groups. It is not cost effective to administer a defense of a poor system that disparately treats its participants.

Mr. Chairman, the subcommittee may be interested in a concept being explored by the County of San Diego to recover the operational costs of equal employment opportunity and civil rights programs. San Diego's effort is directed at allowable costs that would be charged to Federal funding. (Attachment I) In non-federally funded programs, the same allowable costs concept can be implemented in recovering administrative funding of programs.

The cost effectiveness of maintaining the integrity of a merit system can be justified when management simplifies its data gathering and compliance reporting, and monitoring activities. Too often, affirmative action material has been difficult to gather, complicated to process and report, and extremely confusing to understand and utilize. The County of Los Angeles currently has over 62,469 permanent employees in the work force; a sizable number by any standard. Yet, our quarterly reports showing the sex and ethnicity of the work force is simple, concise, and void of any complicated facade that would hamper understanding. I have included a copy of a report completed February, 1981, for your review. (Attachment II)

Mr. Chairman, it has been my experience that contractors in the private sector appreciate and welcome a logical and functional approach to compliance requirements. I would encourage you to examine what Los Angeles County has accomplished, and invite you to participate in what we feel is an aggressive approach to affirmative action.

Again, thank you for the opportunity to provide this testimony.

Sincerely,

MICHAEL H. ISHIKAWA, JR.
Affirmative Action Compliance Officer

RAA/lf

Attachments

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

Mr. Roger F. Honberger
Washington Representative
County of San Diego
1735 New York Avenue, NW, Suite 500
Washington, D.C. 20006

Dear Mr. Honberger:

This is in response to your letter of July 28, 1978, proposing to have required Equal Employment Opportunity (EEO) efforts recognized as allowable costs under Department of Transportation (DOT) grant awards.

Our grant making administrations follow the cost principles contained in Federal Management Circular (FMC) 74-4 for recognizing costs under grant projects. DOT's policy is that EEO costs are allowable in accordance with generally accepted accounting principles and FMC 74-4. Some specific instances where we pay EEO related costs either as direct costs or as indirect costs are:

.Salary costs of the project officer or resident engineer in construction projects when he works on EEO functions at the construction site.

.Costs to develop EEO Affirmative Action Programs in accordance with the requirements of grants or requirements placed on grantees' contractors.

.Administrative costs incurred in order to comply with Title VI of the Civil Rights Act of 1964. The portion of these costs which are allocated through a central service cost allocation plan are not allowable under the Highway Construction grant program of the Federal Highway Administration (FHWA) because of statute.

.Administrative costs of FHWA's upward mobility Construction Training Program.

Our FHWA Division Office in Sacramento is familiar with many of the cost problems that can arise at county governments and can be helpful in explaining DOT's policies and regulations on reimbursing EEO costs. I suggest that the Equal Opportunity Management Office contact Omar Homme, Division Administrator, to discuss the specific problems being encountered. He may be reached at the following address:

ATTACHMENT I

2

FHWA Division Office
Federal Building, Second Floor
801 Eye Street
Sacramento, California 94814
Telephone (916) 440-2428

I trust this information will be helpful to you.

Sincerely,

Barnett H. Anceleits
Director of Installations and Logistics

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
WASHINGTON, D.C. 20531

AUG 4 1978

Mr. Roger F. Honberger
Washington Representative
County of San Diego
Suite 500
1735 New York Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Honberger:

This is in reply to your letter dated July 28, 1978, which addressed the recovery of costs incurred for the administration and monitoring functions of your equal employment opportunity program.

In accordance with Federal Management Circular 74-4, you are authorized to include a line item for equal employment opportunity administration to your indirect cost pool. The resulting indirect cost rate may then be applied when submitting a grant application budget.

Please contact the Grants and Contracts Management Division, Office of the Comptroller, if you have any further questions regarding the administration of your grants.

Sincerely,

James M.H. Gregg
Assistant Administrator
Office of Planning and Management

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

17 AUG 1978

OFFICE OF THE ASSISTANT SECRETARY
FOR COMMUNITY PLANNING AND DEVELOPMENT

IN REPLY REFER TO:

Mr. Roger F. Honberger
Washington Representative
County of San Diego
1735 New York Avenue, N. W.
Washington, D. C. 20006

Dear Mr. Honberger:

This is in reply to your letter of July 28, 1978, to Secretary Harris regarding the eligibility of costs incurred in carrying out equal opportunity requirements.

Under §570.206 of the regulations governing the Community Development Block Grant (CDBG) program, all reasonable administrative costs related to the planning and execution of community development activities financed with CDBG funds and housing assistance activities covered in the applicant's Housing Assistance Plan (HAP) are eligible costs. While that section does not state explicitly that reasonable administrative costs incurred in carrying out the equal opportunity requirements of the program are eligible, it is interpreted to include such costs.

In charging to the CDBG program the reasonable administrative costs incurred in carrying out the equal opportunity requirements, the guidelines contained in Federal Management Circular 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments," must be followed. That circular explains how the cost of services provided to a grant program by support agencies, such as the San Diego County Equal Opportunity Management Office, are to be handled.

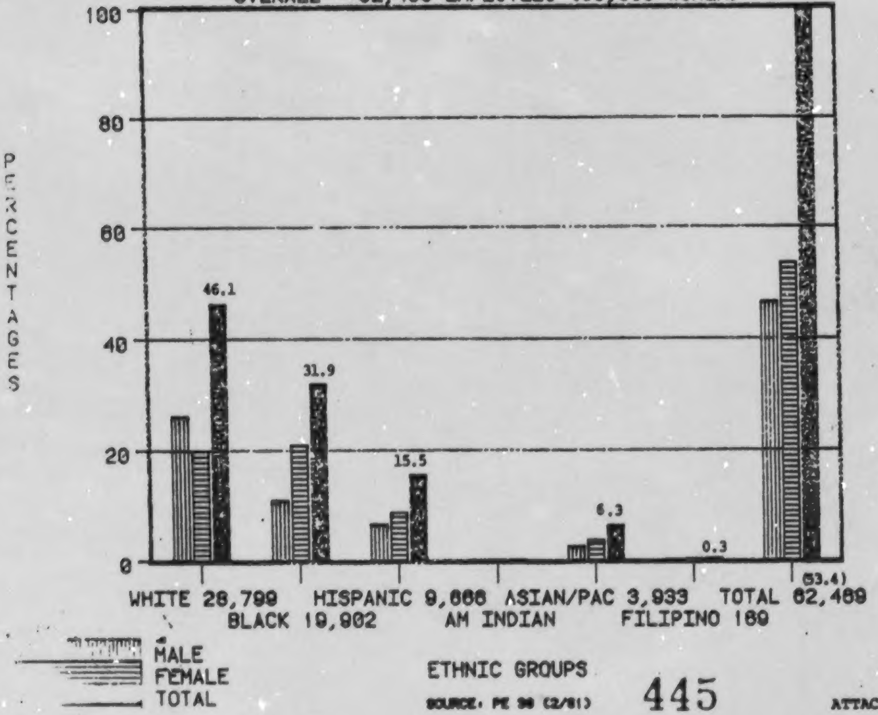
Please let me know if we can be of further assistance.

Sincerely,

Richard C.D. Fleming

Richard C.D. Fleming
Deputy Assistant Secretary

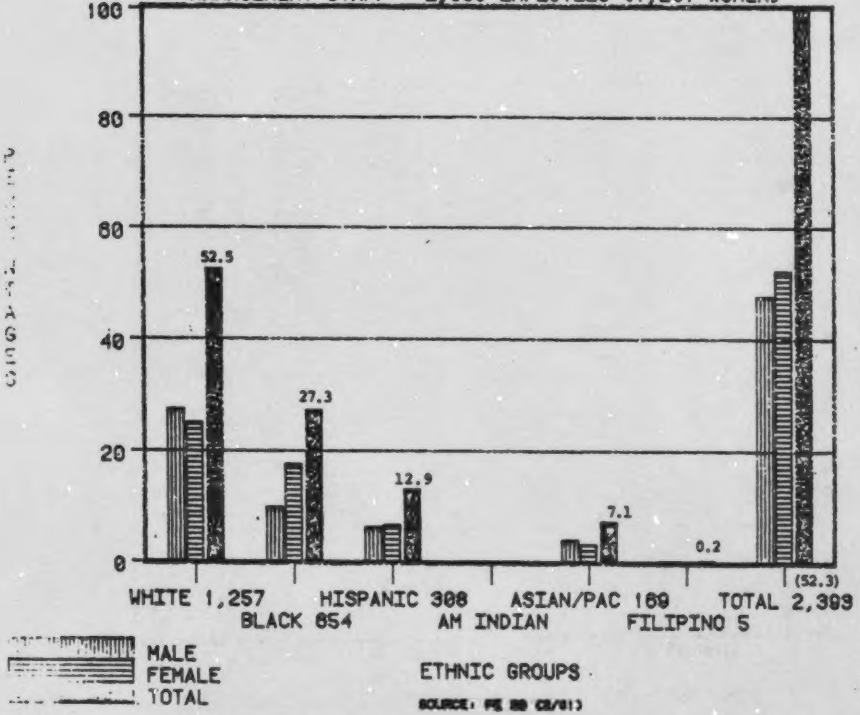
ETHNIC/SEX DISTRIBUTION OF PERMANENT WORKFORCE
COUNTY OF LOS ANGELES
OVERALL - 62,469 EMPLOYEES (33,383 WOMEN)



SOURCE: PE 90 (2/81)

PREPARED BY OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

ATTACHMENT II

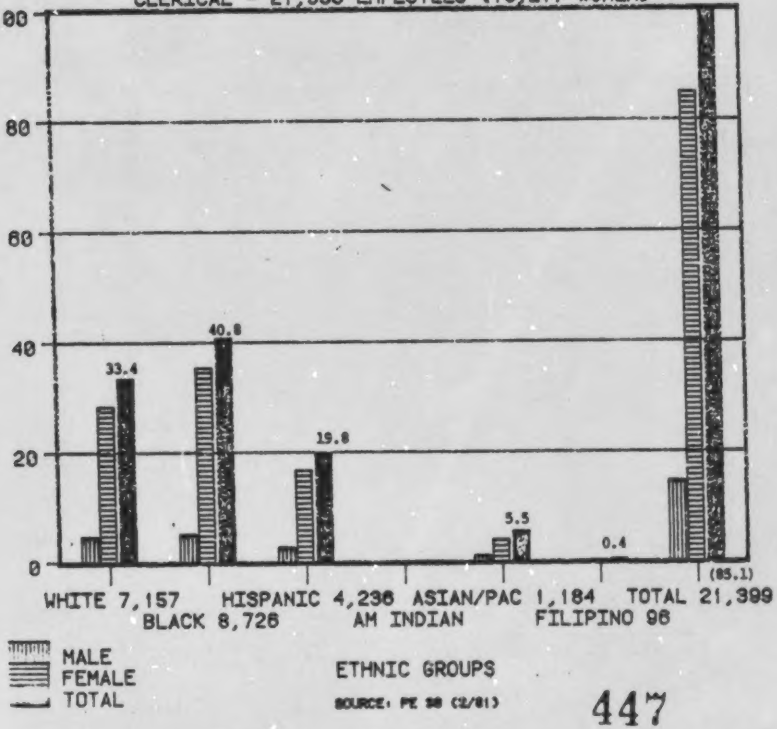


ETHNIC/SEX DISTRIBUTION OF PERMANENT WORKFORCE
COUNTY OF LOS ANGELES
MANAGEMENT STAFF - 2,393 EMPLOYEES (1,251 WOMEN)

SOURCE: PE 80 (2/81)

PREPARED BY
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

ETHNIC/SEX DISTRIBUTION OF PERMANENT WORKFORCE
COUNTY OF LOS ANGELES
CLERICAL - 21,399 EMPLOYEES (18,217 WOMEN)



SOURCE: PE 38 (2/81)

PREPARED BY

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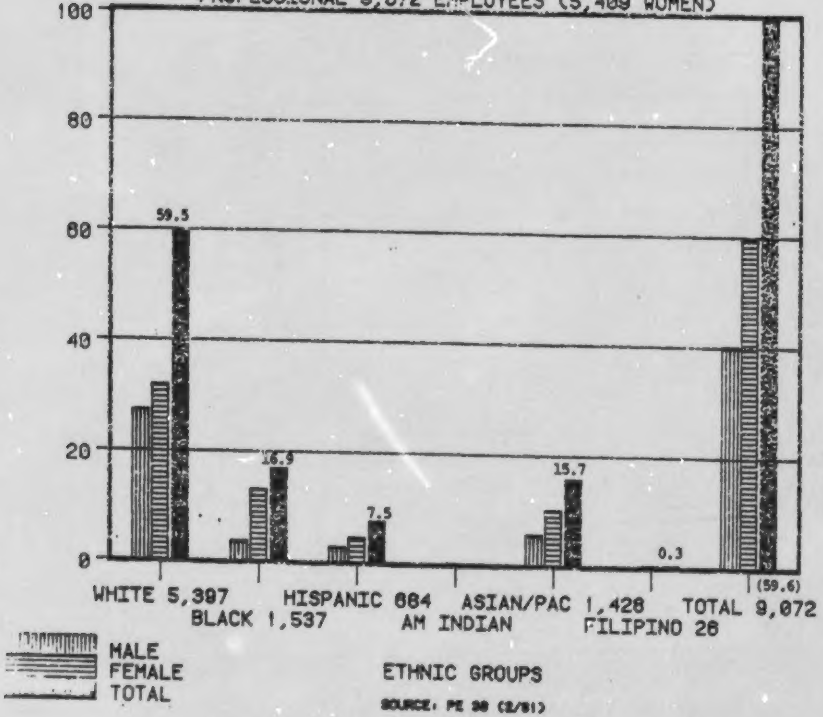
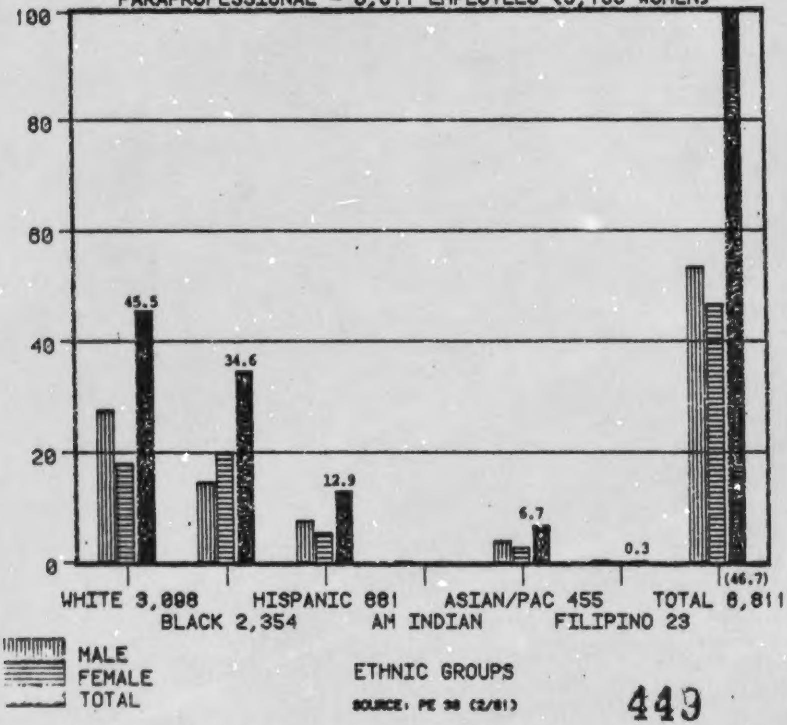
ETHNIC/SEX DISTRIBUTION OF PERMANENT WORKFORCE
COUNTY OF LOS ANGELES
PROFESSIONAL 9,072 EMPLOYEES (5,409 WOMEN)



SOURCE: PE 30 (2/81)

PREPARED BY
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

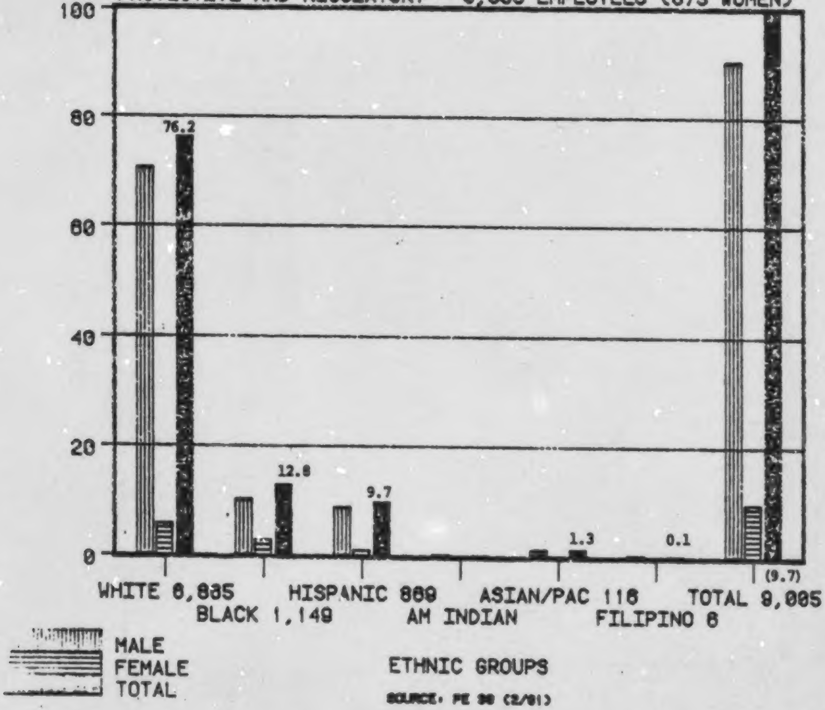
ETHNIC/SEX DISTRIBUTION OF PERMANENT WORKFORCE
COUNTY OF LOS ANGELES
PARAPROFESSIONAL - 6,811 EMPLOYEES (3,183 WOMEN)



SOURCE: PE 38 (2/81)

PREPARED BY
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

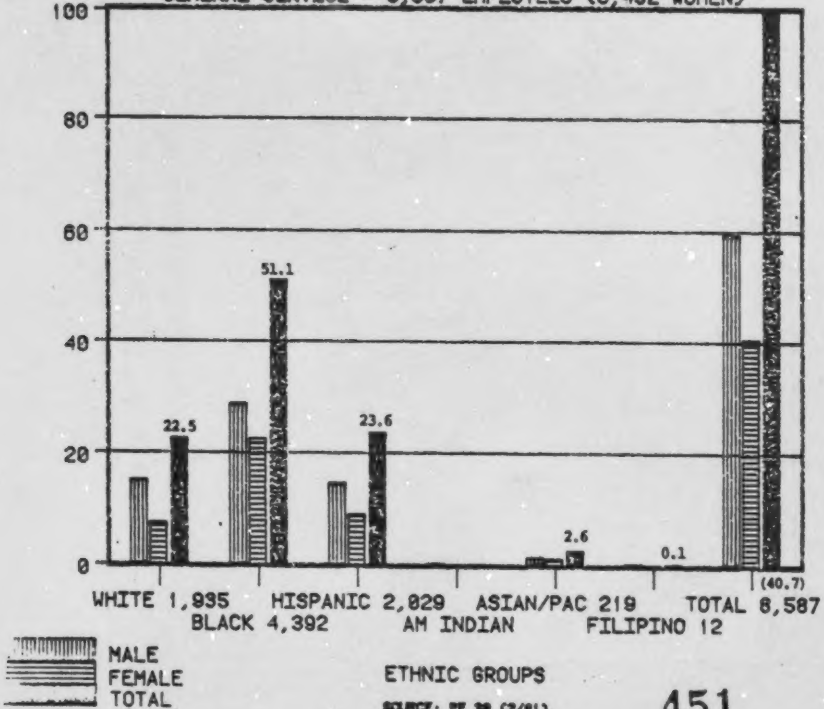
ETHNIC/SEX DISTRIBUTION OF PERMANENT WORKFORCE
COUNTY OF LOS ANGELES
PROTECTIVE AND REGULATORY - 9,005 EMPLOYEES (875 WOMEN)



SOURCE: PE 90 (2/81)

PREPARED BY
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

ETHNIC/SEX DISTRIBUTION OF PERMANENT WORKFORCE
COUNTY OF LOS ANGELES
GENERAL SERVICE - 8,587 EMPLOYEES (3,492 WOMEN)

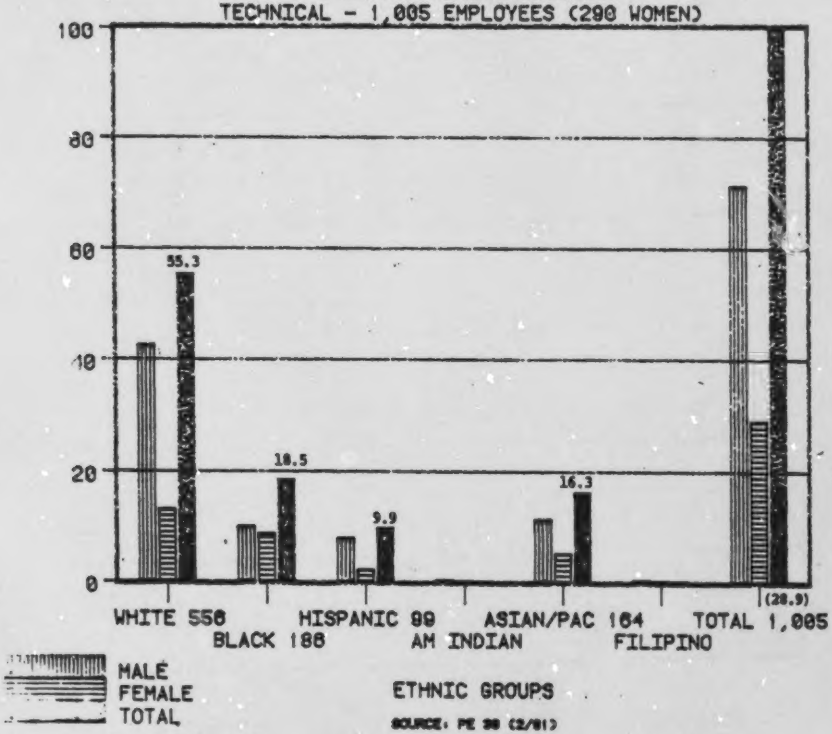


SOURCE: PE 30 (2/81)

PREPARED BY

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

ETHNIC/SEX DISTRIBUTION OF PERMANENT WORKFORCE
COUNTY OF LOS ANGELES
TECHNICAL - 1,005 EMPLOYEES (290 WOMEN)

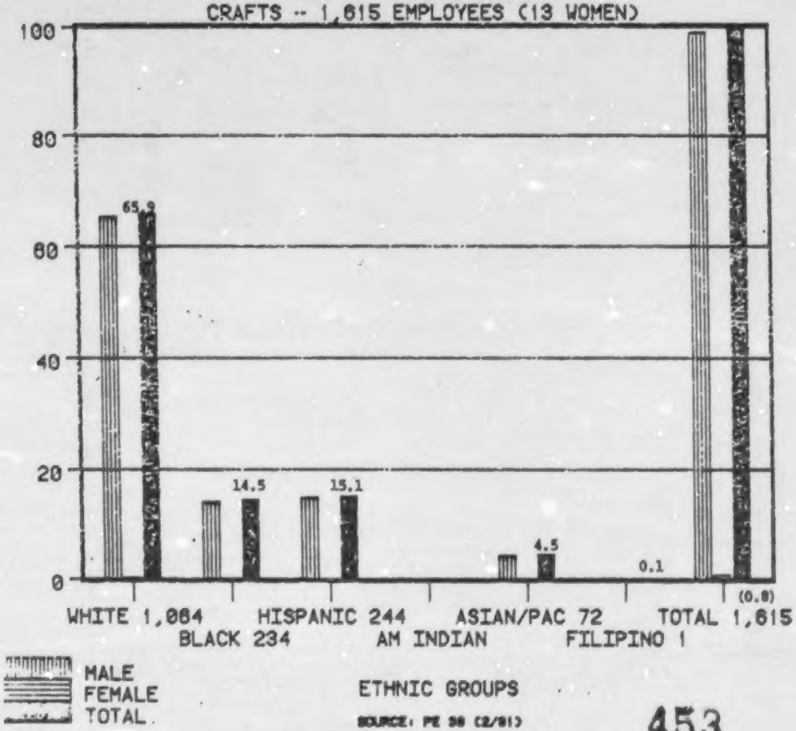


SOURCE: PE 38 (2/81)

PREPARED BY

OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

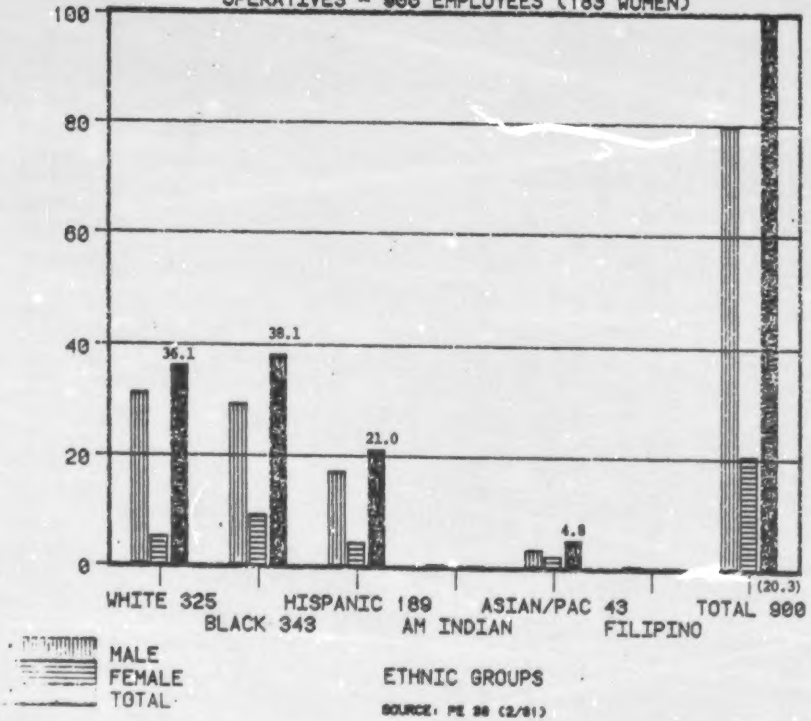
ETHNIC/SEX DISTRIBUTION OF PERMANENT WORKFORCE
COUNTY OF LOS ANGELES
CRAFTS -- 1,615 EMPLOYEES (13 WOMEN)



SOURCE: PE 38 (2/81)

PREPARED BY
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

ETHNIC/SEX DISTRIBUTION OF PERMANENT WORKFORCE
COUNTY OF LOS ANGELES
OPERATIVES - 900 EMPLOYEES (183 WOMEN)



SOURCE: PE 38 (2/81)

PREPARED BY
OFFICE OF AFFIRMATIVE ACTION COMPLIANCE

Mr. **Hawkins**. Thank you, Mr. Ishikawa. As an affirmative action compliance officer for the county of Los Angeles, can you categorically state that affirmative action has in no way reduced the effectiveness of the merit system or in any way adversely affected the morale and productivity of those in the merit system who have not come into the system through nonaffirmative action means?

Mr. **Ishikawa**. Well, I think it has affected the morale of those that have benefited from a merit system that had, in many respects—the "old boy" system—if you will. But in balance, it has increased the morale and provided a stronger, more positive outlook for other persons in our society, minorities and women particularly, and the handicapped, that that merit system, in fact, is working on their behalf as well.

I do believe that it has probably caused heartburn and discomfort to many administrators who have worked under this particular merit system for the past years and would like to sustain that, because it is one that they, of course, have been trained under and has best served their needs.

Mr. **Hawkins**. You are shaking some of them up, I guess, with your positive outlook.

Mr. **Ishikawa**. Absolutely.

Mr. **Hawkins**. Mr. Washington?

Mr. **Washington**. No questions.

Mr. **Hawkins**. Mr. Weiss.

Mr. **Weiss**. Thank you, Mr. Chairman. I have no questions.

Mr. **Hawkins**. Thank you once again, Mr. Hadley, Mr. Ishikawa, for your attendance.

Now we will get to the final panel with apologies: Ms. Irene Hirano, chairperson, California Commission on the Status of Women; and Ms. Peggy Pratt, chairperson, Los Angeles Working Women.

The Chair would like to state we have done some shuffling in order to accommodate individuals who have planes to catch. I hope we have not unduly inconvenienced you. I wish to state the admiration we have for your indulgence and your patience and we certainly look forward to your testimony.

STATEMENT OF IRENE HIRANO, CHAIRPERSON, CALIFORNIA COMMISSION ON THE STATUS OF WOMEN

Ms. **Hirano**. Thank you very much.

The gains for women and minorities since the 1960's made possible through legislation and executive mandates, have resulted in labor force participation unprecedented in history. The impact of affirmative action and the critical work that remains is a major issue for the decade of the 1980's.

Earlier this year, the California Commission on the Status of Women, in cooperation with the State's department of industrial relations, department of fair employment and housing, and the commission on fair employment and housing, held hearings in five cities in California to examine solutions to the problem of pay inequities for women workers. The concept of comparable worth—equal pay for work of equal value—was the special focus of the hearings. In addition to the discussion about this important concept, the message was clear—while substantial gains have been made, the pay differentials, occupational segregation, and unequal value of women workers requires continued aggressive and innovative approaches to employment discrimination.

What has the impact of affirmative action policies had on women in the labor force? The number of women in the labor force has more than doubled in the past 30 years, from 18 million women workers in 1950 to 44.6 million in 1980. It is estimated that women will continue to enter the work force at the rate of 1 million a year during the decade ahead, including more than half of all married women with children under 6 years of age. Women now constitute nearly 43 percent of the work force, with 60 percent of women 16 to 64 years working for pay.

The number of working mothers has increased more than tenfold since the 1940's. Fifty-five percent of all mothers with children under 18 years—16.6 million—were in the labor force in 1979; 45 percent of mothers with preschool children were working. It is estimated that by 1990, 66 percent of mothers will be working. Women have entered the work force because of economic need. It is frequently the wife's earnings which have raised a family out of poverty. In husband-wife families in 1979, 14.8 percent were poor when the wife did not work; 3.8 percent when she was in the labor force. Of all wives who worked in 1979, the median contribution was more than one-fourth of the total family income. The labor force participation figures for minority women indicates tremendous growth, both in employment and unemployment.

Although it is illegal to use the paycheck as a tool of discrimination, as mandated by the Federal Equal Pay Act of 1963 and title VII of the 1974 Civil Rights Act, women in this country today continue to earn less money than men—much less. The wage gap between men and women has been growing, with 1955 figures at 64 cents for every dollar, and 1980 figures only 59 cents earned by women for every dollar earned by her male counterpart.

The gains of women and minorities would not have occurred without affirmative action measures. The proposed dismantling of affirmative action gains would set back the years of job recruitment, job creation, and integration of women and minorities into the labor force.

Part of the wage gap between men and women persists because of occupational segregation. When men and women perform identical work, they now receive, in many cases, identical pay, but the vast majority of working women do not hold the same jobs as men. They are employed in occupations that are predominantly female, occupations that are historically low in pay and low in status. Nearly 80 percent of all women working are segregated into clerical, service, unskilled industrial, and retail occupations. Many claim that these jobs are undervalued and consequently undercompensated because they are held by women.

According to the U.S. Equal Employment Opportunity Commission [EEOC], pay differentials based solely on sex and race constitute wage discrimination. In the winter of 1979, the EEOC held hearings to investigate "whether wage rates of jobs in which women and minorities have been historically segregated are likely to be depressed because those jobs are occupied by these groups.

. . . There is evidence that the low rates of pay associated with such segregated jobs constitute the major explanation for the 'earnings gap' between minority and female workers on the one hand and white males on the other."

Some of the options in closing this wage gap relate to promotion and layoffs other than by seniority, moving women into nontraditional skilled jobs and upgrading the pay of women based on job evaluation by skills, responsibility, and effort. This latter concept, known as equal pay for comparable worth, is emerging as an important consideration in addressing employment discrimination. Whether the Equal Pay Act and title VII of the Civil Rights Act of 1964 can be interpreted to decide suits related to comparable worth issues has not yet been fully resolved by the courts. In an attachment to the written materials presented to you, an analysis of the Equal Pay Act, title VII and the Bennett amendment to title VII is discussed in relation to recent court cases.

In the recent U.S. Supreme Court's decision in the case of the *County of Washington* v. *Alberta Gunther, et al.*, June 8, 1981, while the issue of comparable worth was not resolved, the requirements under title VII was broad-ended to allow employees to sue in businesses engaged in retail sales, fishing, agriculture, and newspaper publishing, which is not covered under the Equal Pay Act. These are businesses which involve both minorities and women. Unless the Equal Pay Act in title VII is continued these gains will be eliminated.

There is a need for the continuation of affirmative action and for the measures to be expanded in the arena of affirmative action to address the issue of pay equity, the problems of women in certain job classifications, and the dead-end positions of women and certain ethnic minorities. It is also important to streamline ways to allow minorities to file discrimination claims to result in a quicker resolution to a grievance. The maze of EEOC and other governmental agencies have made it difficult for lower income women and other minorities to succeed.

I would recommend to you that the areas of employment discrimination actions which need to be continued are:

One: The area of the kinds of hiring and firing that will occur as a result of cutbacks.

Two: The closing of the wage gaps resulting from women being employed in certain jobs.

Three: Streamlining the avenues for filing of discrimination suits and actions.

Four: Simplify reporting procedures of quotas and guideline compliance.

Five: Expand avenues of affirmative action into the industries of garment workers, cannery workers, and farm workers.

Specific data on women workers in the eighties which demonstrate the positive impact that affirmative action has had is attached in this statement. There is no doubt that the number and proportion of women in the labor force continued to rise during the first quarter of 1981. Median weekly earnings of $204 were reported by women who worked at full-time wage and salary jobs in 1980. In order to develop realistic options for welfare mothers, unskilled and untrained women and young women, affirmative action policies and employment options must be aggressively continued. The attempts to dismantle the gains of the past two decades must be curtailed.

Mr. HAWKINS. Thank you.

[Material submitted by Irene Hirano follows:]

Employment in Perspective: Working Women

First Quarter 1981

U.S. Department of Labor
Bureau of Labor Statistics

Report 647

MAY 2 6 [illegible]

This report presents highlights of current data on women in the labor force. The data are taken from the Current Population Survey conducted monthly for the Bureau of Labor Statistics by the Bureau of the Census.

More women employed

The number and proportion of women in the labor force continued to rise during the first quarter of 1981. On average, 52 percent of those 16 years old and over were working or looking for work. Women accounted for most of the Nation's labor force gains during this period and more than two-thirds of the over-the-year increase. All of the expansion in the female labor force between the fourth quarter of 1980 and the first quarter of 1981 was in employment. The number of jobless women—3.5 million—was unchanged from the previous quarter, but was substantially higher than a year ago.

Women less likely than men to have flexitime

Flexitime—a work schedule that provides individual workers with some choice over the time their workday begins and ends, without affecting their total hours of work over a given period—was less prevalent among female than male workers in May 1980. Among full-time, nonfarm, wage and salary workers, 10 percent of the women compared with 13 percent of the men had this alternative available.

Children with working mothers

At the outset of 1980, 53 percent of children under 18—30.7 million—had mothers in the labor force compared with 39 percent 10 years earlier. Slightly more than 5 of 10 children living in two-parent families had mothers who worked, as did more than 6 of 10 children living with their mothers only. While the total number of children in the population declined during the year which ended March 1980, as it had throughout the 1970's, the birth rate increased slightly. As a result, the number of children under age 6 grew by 437,000, the first over-the-year increase in a decade. By March 1980, 43 percent of all youngsters below age 6 had mothers in the labor force compared with 29 percent in March 1970.

Women's weekly earnings

Median weekly earnings of $204 were reported by women who worked at full-time wage and salary jobs in 1980. Women's earnings were highest, on average, for professional-technical workers. In contrast, the median for men was highest among managers and administrators. Overall, women's weekly earnings were about 63 percent of those of men. While significant variations were registered by job group, even in the female-intensive clerical and service occupations, women made only two-thirds the earnings of men in 1980, as shown below:

Occupational group	*Median weekly earnings*		*Women's earnings as percent of men's*
	Women	*Men*	
Total employed	$204	$322	63.3
Professional-technical	287	406	70.7
Manage. administrators, except farm	257	435	59.1
Sales	176	337	52.2
Clerical	199	305	65.3
Craft	213	334	63.8
Operatives, except transport	174	275	63.3
Transport operatives	213	290	73.5
Nonfarm laborers	172	227	75.8
Private household service	93	([1])	—
Other service	155	225	68.9
Farm workers	141	173	81.[illegible]

[1] Median not shown where number employed is less than 50,000.

Multiearner families

More than 29 million married-couple families had two or more earners at some time during 1979. Multiearner families accounted for almost 61 percent of all married couples, and in more than 6 out of 7 of these families, both the husband and wife were earners. About two-thirds of these wives worked 40 weeks or more during the year, mostly full time. Wives' earnings averaged slightly more than $6,300 in 1979 and were nearly $10,200 if they worked year round, full time. Median income for families in which both spouses were earners was $25,300 in 1979, compared with $18,900 for families in which the husband was the only earner.

Summary indicators on working women

(Data are seasonally adjusted unless otherwise indicated)

Indicator	March 1980	January 1981	February 1981	March 1981
1. Population and labor force				
Women 16 years and over:				
Civilian noninstitutional population	86,054,000	87,142,000	87,231,000	87,313,000
Civilian labor force	44,182,000	45,178,000	45,343,000	45,549,000
2. Labor force participation rates (labor force as percent of population)				
Women 16 years and over	51.3	51.8	52.0	52.2
16 to 19 years	53.0	52.5	52.8	52.9
20 to 24 years	67.9	70.2	69.8	69.3
25 to 54 years	63.8	64.7	64.8	65.0
55 years and over	22.8	22.3	22.5	22.9
White	51.1	51.6	51.8	51.9
Black	52.5	53.4	52.9	53.5
3. Employment status				
Women 16 years and over:				
Employed	41,139,000	41,684,000	41,882,000	42,029,000
Unemployed	3,043,000	3,493,000	3,461,000	3,519,000
16 to 19 years:				
Employed	3,591,000	3,491,000	3,473,000	3,465,000
Unemployed	747,000	741,000	782,000	794,000
20 to 24 years:				
Employed	6,340,000	6,469,000	6,439,000	6,449,000
Unemployed	626,000	783,000	780,000	726,000
25 to 54 years:				
Employed	25,679,000	26,264,000	26,476,000	26,554,000
Unemployed	1,507,000	1,769,000	1,673,000	1,741,000
55 years and over:				
Employed	5,529,000	5,460,000	5,494,000	5,561,000
Unemployed	163,000	200,000	225,000	259,000
4. Unemployment rates (unemployed as percent of labor force)				
Women 16 years and over	6.9	7.7	7.6	7.7
16 to 19 years	17.2	17.5	18.4	18.7
20 to 24 years	9.0	10.8	10.8	10.1
25 to 54 years	5.5	6.3	5.9	6.2
55 years and over	2.9	3.6	3.9	4.5
White, 16 years and over	6.0	7.0	6.7	6.6
Black, 16 years and over	13.4	13.9	14.7	16.2
White, 16 to 19 years	14.7	15.5	16.6	15.7
Black, 16 to 19 years	39.6	36.3	38.0	44.7
5. Full-time workers (not seasonally adjusted)				
Percent of employed women working full time	71.2	70.7	70.4	70.3
Percent of unemployed women looking for full-time work	70.8	76.2	76.8	74.3

Summary indicators on working women—Continued

Indicator	March 1980	January 1981	February 1981	March 1981
6. Duration of unemployment (not seasonally adjusted)				
Average (mean) number of weeks unemployed women have been looking for work	10.2	11.7	12.6	12.4
7. Family status (not seasonally adjusted)				
Total women 16 years and over in families	71,943,000	72,656,000	72,519,000	72,536,000
Women maintaining families, no husband present:				
Population	8,551,000	8,947,000	9,019,000	8,867,000
Labor force participation rate	59.2	59.6	59.8	60.3
Unemployment rate	8.7	10.5	10.1	9.5
Married women, husband present:				
Population	48,377,000	48,384,000	48,286,000	48,504,000
Labor force participation rate	50.3	50.8	50.9	51.1
Unemployment rate	4.9	6.1	5.7	5.6
All other women in families:				
Population	15,015,000	15,325,000	15,214,000	15,165,000
Labor force participation rate	50.9	51.5	51.3	51.2
Unemployment rate	12.0	13.3	13.5	13.6

NOTE: Due to rounding, some components may not add to totals.

Technical note

Most of the data in this report are from the Current Population Survey, a sample survey of 65,000 househoulds in the United States. The information obtained from this survey relates to the employment status of persons 16 years old and over in the civilian noninstitutional population. This report includes revised seasonally adjusted data based on computations of seasonal factors reflecting the 1980 experience. For a detailed explanation of the Current Population Survey, including sampling reliability and more complete definitions than those below, see *Employment and Earnings*, published monthly by the Bureau of Labor Statistics.

Brief definitions

Civilian labor force. The labor force comprises all persons classified as employed or unemployed.

Employed. Employed persons are all those who (a) worked for pay at any time during the survey week; (b) worked 15 hours or more as unpaid workers in a family business; or (c) had a job but were not working due to illness, bad weather, etc.

Unemployed. Unemployed persons are those who (a) were not working during the survey week, and made specific efforts to find a job in the preceding 4 weeks; (b) were on layoff and waiting to be recalled; or (c) were waiting to report to a new job within 30 days.

Not in civilian labor force. All persons not classified as employed or unemployed.

Labor force participation rate. The labor force as percent of the population.

Unemployment rate. The unemployed as a percent of the labor force.

Full- and part-time workers. Full-time workers are those who usually work 35 hours or more per week. Part-time workers are those who usually work 1 to 34 hours per week.

For further information, please contact Allyson Sherman Grossman or Beverly L. Johnson, Office of Current Employment Analysis, Bureau of Labor Statistics, Washington, D.C. 20212. Phone: 202-523-1959.

GPO 870-987

STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor

CALIFORNIA COMMISSION ON THE STATUS OF WOMEN
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COMPARABILITY: AN ISSUE FOR THE 80's

It is illegal to use the paycheck as a tool of discrimination. So say the Federal Equal Pay Act of 1963 and Title VII of the 1964 Civil Rights Act. For 17 years, the law has required that men and women performing the same work receive the same wage. For 16 years, it has been against the law to deny a woman a job -- particularly in a traditionally male field -- simply on the basis of sex.

Yet women in this country today continue to earn less money than men -- much less. The wage gap between men and women actually has been growing. In 1955, a working woman took home 64 cents for every dollar earned by a man. Today, the paycheck of the average working woman contains only 59 cents for every dollar earned by her male counterpart.

We now realize that the wage gap between men and women persists because of a phenomenon known as occupational segregation. When men and women perform identical work, they receive, in most cases, identical pay. But the vast majority of working women do not hold the same jobs as men. They are employed in occupations that are predominantly female, occupations that are historically low in pay and low in status. Roughly half of all adult women in this country are working outside the home; nearly 80 percent of them are segregated into clerical, service, unskilled industrial, and retail occupations. A number of experts claim that many of these jobs are undervalued and consequently under-compensated because they are held by women.

There are some colorful examples which illustrate this point. For hundreds of years, a secretarial position was respectable, responsible, well-paid, and occupied by a man. The flowing and readable handwriting of a good clerk was prized by businessmen and attorneys. Then the typewriter was invented, and clerical work became menial drudgery. It was then that the field opened to the women who were moving into the labor force. Now more than 90 percent of all clericals are women, and they are paid considerably less than the equivalent salaries of their male predecessors.

In today's business world, a good secretary must have a high school education, the ability to understand complex instructions and complicated technical material, a command of sophisticated office machinery, and excellent communication skills. Yet in the majority of organizations, the wage rate for secretaries does not match that for parking lot attendants, stock room clerks, and custodians. Is the work of the secretary any less valuable to the organization than that of other employee classifications? More often than not, the answer lies not in the value of the work, but in the gender of the person who performs it. In Denver, the city and county pay the nurses on its payroll less than they pay tree trimmers and painters. The University of Washington in Seattle pays its experienced secretaries anywhere from one hundred to several hundred dollars a month less than starting truck drivers.

According to the United States Equal Employment Opportunity Commission (EEOC), pay differentials based solely on sex (and race) constitute wage discrimination. In the winter of 1979, the EEOC held hearings to investigate "whether wage rates of jobs in which women and minorities have been historically segregated are likely to be depressed because those jobs are occupied by these groups ... There is evidence that the low rates of pay associated with such secregated jobs constitute the major explanation for the 'earnings gap' between minority and female workers on the one hand and white males on the other."

What can be done to close the wage gap between men and women? If men and women were evenly distributed among all occupations, the gap would narrow considerably. We have seen some movement in this direction in recent years, but it will be a long, long time before occupational segregation is worn away.

Another approach to the problem lies in the concept of equal pay for work of comparable worth. Comparability, as it is known, holds that jobs which require comparable skills, responsibility, and effort should earn comparable compensation. A cogent explanation of comparability is offered by Mary Helen Doherty in her paper, "Equal Pay for Work of Comparable Worth: The Issue of Wage Comparability." "Comparability steps beyond the equal pay for equal work concept by delving into comparisons of the pay differentials between 'men's' jobs and 'women's' jobs. The management tool utilized in making such comparisons is the long-standing system of job evaluation. Dating back to the days of Frederick W. Taylor in 1881, measurements of job worth were utilized for the purpose of setting pay rates on the assumption that it is the job, not the worker, that is evaluated and rated. In order to develop an effective solution to the problem of sex segregation of occupations and sex bias in pay rates, job evaluation systems can be effectively employed to determine the worth of jobs independently of the job market and to demonstrate that wages assigned by the market do not always reflect worth."

In short, the crux of comparable worth is the job evaluation system by which one determines the relative value of jobs in an office, an organization, or an industry. The proponents of comparability believe that bias-free job evaluation systems are possible. In fact, the EEOC has contracted with the National Academy of Sciences to study existing systems of job analysis and evaluation.

The Academy's Committee on Occupational Classification and Analysis has already sent an interim report to the EEOC which analyzes the most common systems of job evaluation. While the interim report draws no conclusions, it does state that "three features of formal job evaluation procedures render problematic their utility for job worth assessment in a labor force highly segregated by sex." These include a propensity to weight evaluation factors by pegging them to current discriminatory wage rates; the subjectivity inherent in job evaluation which in turn poses a constant threat of sexual stereotyping; and the tendency for employers to use a different job evaluation plan for each sector of the organization, making it impossible to compare the worth of jobs from one sector to another.

The interim report implies that the final report could go either way. That is, "the utility of these procedures may more than outweigh any shortcomings," or the problems may be so great that existing job evaluation procedures may prove useless in resolving wage discrimination disputes. Once the EEOC receives the final report, it is expected to eventually issue guidelines on comparable worth.

Enthusiasm for comparable worth is far from universal. By and large, the arguments against comparability fall under three headings: Logic, economics, and legality. The essence of the opposition to comparability is contained in an article in the Winter, 1980 issue of the University of Michigan Journal of Law Reform, "Wage Discrimination and the 'Comparable Worth' Theory in Perspective", by Bruce A. Nelson, Edward M. Opton, Jr., and Thomas E. Wilson. The authors argue that while job segregation is a statistically provable fact of life, there is no logically demonstrable proof of the linkage between job segregation and wage discrimination. A wholesale assumption of wage discrimination such as that made by the EEOC does not differentiate among employers who discriminate and those who do not, nor does it specify exactly how much an employee or group of employees is underpaid. Of the three methods of evaluating the worth of a given job -- market value, job evaluation systems, and marginal productivity analysis -- only the latter has some validity in measuring wage discrimination, and even then, the analysis is only indirect and inferential.

The economic opposition to comparability relates in part to the projected cost of implementing the theory. Two years ago, it was estimated conservatively that to raise the aggregate pay of the country's full-time working women so that the median pay for women equalled that for men would add $150 billion a year to civilian payrolls. Today the cost would be even greater.

Many opponents of comparability believe that the most valid means of determining job worth is the law of supply and demand in a free marketplace. Thus, if there is a dire shortage of secretaries, wages would rise to lure more workers into the field until the need is met. The reason secretarial wages remain depressed is because there has never been a shortage of women willing to meet the demand. Mandated pay structures would throw the natural balance completely out of alignment.

Perhaps most critical to comparability is the question of whether there is legal basis for enforcing it. The EEOC is looking to Title VII of the Civil Rights Act of 1964 as the legal foundation for its eventual guidelines on comparability. A number of experts feel that Title VII does not provide the necessary justification, and with two notable exceptions, the courts have agreed.

The nurses of Denver, mentioned earlier, filed suit against the city and county for sex discrimination. The U.S. District Court judge who found against the plaintiffs said, "This is a case which is pregnant with the possibility of disrupting the entire economic system of the United States of America ... I'm not going to restructure the entire economy of the U.S." At the University of Northern Iowa, a study placed secretaries and maintenance workers in the same labor grade or salary classification. Nonetheless, the university persisted in paying the secretaries less. When the women sued the university, the court upheld the school, saying in part, "We find nothing in the text and history of Title VII suggesting that Congress intended to abrogate the laws of supply and demand or other economic principles that determine wage rates for various kinds of work."

In only two of the several discrimination suits filed citing Title VII as the legal basis for challenging pay inquity in a comparable worth situation has the court accepted its applicability. The most widely known case involved a suit brought against Westinghouse by the International Union of Electrical, Radio and Machine Workers. In August 1980, the Third Circuit Court of Appeals in Philadelphia overturned a lower court ruling and found that the 1964 Civil Rights Act did provide that women doing work comparable to men in the same company should receive equal pay. In some circles, this decision is seen as the signal the EEOC has been waiting for to issue its guidelines on comparable worth or to file its own suit.

At this point in the history of the comparability issue, the EEOC seems to be leading the struggle to validate the concept. However, state involvement goes back almost a decade, in some instances with considerable success. The states of Washington, Connecticut, Michigan and Idaho have all conducted studies, and Idaho has actually implemented a salary system based on pay equity. The Carlsbad Unified School District in California has had a pay equity system in operation for several years; other local agencies such as the Manhattan Beach School District and the Coachella Valley Water District, have conducted studies without implementation. Section 11 of the Canadian Human Rights Act makes it illegal "for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value." The four factors which are considered in evaluating a job include skill, effort, responsibility and working conditions.

Obviously, equal pay for work of comparable worth is a concept of tremendous significance for women in the labor force, and also the subject of heated and growing controversy. In this matter, as in others affecting the women of California, the State Commission on the Status of Women will be looked to as a source of objective information. Therefore, the Commission has scheduled a series of hearings to examine the issue of comparability from all sides. The Commission will use the information gathered in written and oral testimony and taken from research conducted by the staff to assess the significance of comparability for the women of California.

Excerpt from California Commission on the Status of Women
Working Paper on Comparable Worth - August 1981

Central to comparable worth theory is the fact that wages for jobs held predominately by women have usually paid less than jobs held mostly by men. Comparable worth advocates state that this is true even when as few as 70% of the jobs in a specific job classification (nurses, janitors, etc.) are held by members of one sex and where there is supposedly no barrier to entry into the classification for either sex.

In Lemons v. Denver, the most well-known comparable worth case prior to Gunther, the court heard a complaint from nurses. They claimed sex discrimination regarding wages because city nursing employees, a female-dominated class, were paid less than city tree-trimmers, a male-dominated class. The court decided that "paying persons employed in a female-dominated occupation less than what persons doing comparable work in a male-dominated position are paid is no violation (of Title VII and the Equal Pay Act), absent a showing of differences based directly or indirectly on sex discrimination." Other courts, while acknowledging the existence of sex-dominated occupations, have followed the reasoning of the Lemons court, finding no discrimination.

Employers maintain that setting wages according to comparable worth would upset the currently-used system of paying employees in each job according to the prevailing wage in their market area. The courts have generally accepted this idea. For example, in Christensen v. State of Iowa, an oft-cited case in equal pay suits, the court found that "... (the) practice of paying physical plant workers who are predominently men more than it pays clerical workers, who are exclusively women, because skills of physical plant workers command higher wages in the local labor market ... is not a prima facie violation of Title VII because the law does not require an employer to ignore the labor market in setting wage rates for genuinely different work classifications ...."

Interpretation of Title VII and the Equal Pay Act is the crux of comparable worth litigation. Title VII and the Equal Pay Act are the two bodies of law used when pleading sex discrimination in employment cases.

The Equal Pay Act was passed in 1963 and pertains only to discrimination on account of sex. The plaintiff bears the burden of proving that an employer pays different wages to employees of opposite sexes for equal work on jobs the performance of which require equal skill, effort, and responsibility, and which are performed under similar working conditions.

The plaintiff need not show that the jobs are identical, but only that the actual job requirements and performance are substantially equal. Job content, not job titles or classifications, is the measuring factor.

Title VII is a broader standard, and makes it an unlawful employment practice for an employer to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's sex, race, age, or national origin. Many plaintiffs used Title VII to sue because they contended that claims for sex-based wage discrimination could be brought even though no member of the opposite sex held an equal but higher-paying job.

The Bennett Amendment to Title VII was passed as a technical correction after the original bill had been debated. It is this amendment which has stirred much controversy in the courts and among advocates and opponents of comparable worth. The amendment states that it shall not be an unlawful employment practice under Title VII for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid employees if such differentiation is authorized by Section 206(d) of the Equal Pay Act: different wages based on a merit system, a seniority system, higher quality or quantity of production, or any other factor other than sex.

Two interpretations of the legislative intent of the Bennett Amendment were then advanced. Employers and most courts said that the purpose of the amendment was to restrict Title VII sex-based wage discrimination claims to those that could also be brought under the Equal Pay Act and, thus, claims not arising from equal work were precluded. Plaintiffs argued that the amendment was designed merely to incorporate the four employers' defenses listed above into Title VII for sex-based wage discrimination claims. In other words, the work need not be "equal," and if the employer did not have one of the four Equal Pay Act reasons for a discriminatory pay scale, the plaintiff would win. The courts almost unanimously adopted the former interpretation, which is where the law stood when the U.S. Supreme Court agreed to hear Gunther.

Alberta Gunther and her co-workers were female jail matrons in the Washington County, Oregon, jail. They received significantly lower pay than their male counterparts for doing what the Appeals Court found was substantially equal work. The County appealed after Gunther won in the Appeals Court.

The Supreme Court found the issue involved to be narrow indeed: Gunther claimed her wages were depressed because of intentional sex discrimination; was such a claim precluded by the Bennett Amendment? The court found that it was not. The majority opinion, written by Mr. Justice Brennan, held that the purpose of the Bennett Amendment was merely to incorporate the four Equal Pay Act defenses into Title VII, so that parties claiming sex-based wage discrimination were able to sue whether or not the Equal Pay Act "equal work" standard was met. Thus, the lower courts' interpretation of the amendment's purpose was contradicted.

Brennan based his opinion on the fact that the County had commissioned a study for the purpose of setting wages. The study recommended that jail matrons be paid 95% of that paid male guards, but the County paid only 75% as much, while paying male guards the full evaluated worth of their jobs. The failure of the County to pay respondents the full evaluated worth of their matron jobs can be proven to be attributed to sex discrimination, Brennan found.

The significance of this decision is at least four-fold. First, the majority stated that Gunther's claim was not based on "the controversial concept of comparable worth." Even respondents distinguished this case from Lemons v. Denver, which was a comparable worth case. The court acknowledged this distinction.

In a court case, there are two types of findings: holding and dicta. Holding is that part of the opinion which directly relates to the issue being litigated; it is the part of the opinion which lower courts must follow when making decisions on the same or similar issues. Dicta, on the other hand, is discussion by the court on the facts of the case, other court opinions preceeding the one being discussed, history of the issue, etc. Dicta is not binding of lower courts.

The statement that Gunther is not a comparable worth case is dicta. It does not relate to the main issue, which is whether the Bennett Amendment precludes this suit. While the majority did not endorse comparable worth in Gunther, neither did they condemn it. Brennan simply states that comparability did not apply to this case.

Courts in the past have misinterpreted which section of a case is holding and which is dicta. Therefore, some lower courts may use the statement in Gunther, cited above, to justify an opinion rejecting the legality of comparable worth.

Second, by overturning the interpretation that the "equal work" standard is necessary for Title VII suits of this nature, the majority broadens the field of possible litigants. The Equal Pay Act does not apply to certain businesses engaged in retail sales, fishing, agriculture, and newspaper publishing. Now, these employees may sue under Title VII.

Third, the majority claimed that the remedial purposes of Title VII and the Equal Pay Act could be stifled by the old interpretation. For instance, a woman would have had no remedy if she were hired to fill a unique position in a business and then told that her salary would have been higher had she been male. Also, all women who held jobs never held by men would have been left remediless.

Fourth, the issue of job evaluation systems is still in doubt after Gunther. Here, the County had its own evaluation. The court did not have to weigh statistics and evaluate the worth of the jobs, someting they are loath to do in the absence of any recognized system.

An Overview of Women in the Workforce

42.6%—44.6 million—of the U.S. workforce are women. In 1980, 60% of women 16 to 64 were working for pay.

The number of women in the labor force has more than doubled in the past 30 years—from 18 million women workers in 1950 to 44.6 million in 1980 when women accounted for more than two-fifths of all workers. This explosive growth rate was most intense among women 25-34 years old. In 1950 only 34% of women in that age bracket worked, while in 1980 the percentage increased to 65.4%. The median age of women workers in 1980 was 34 years.

Of the women in the workforce in 1979, nearly 80% were in clerical, sales, service, factory, or plant jobs.

According to the Department of Labor, women workers in 1979 were divided into the following occupational categories:

Professional technical	16.1%
Managerial administrative (except farm)	6.4%
Sales	6.9%
Clerical	35.0%
Craft	1.8%
Operatives, including transport	11.5%
Nonfarm laborers	1.3%
Service (except private household)	17.2%
Private household	2.6%
Farm	1.2%

The percentage of women in professional occupations has increased less than 2% in the past decade in spite of the increased number of females in the workforce.

Within occupational categories, women are concentrated within certain job titles. For example, within professional occupations, women constitute 97% of all registered nurses and 71% of all elementary and secondary school teachers. However, they comprise less than 3% of all engineers and less than 11% of all doctors.

In addition, wages vary considerably for men and women within the same job category, with women earning significantly less. In 1979, the wage gap was:

	Women	Men
Sales	45¢	$1.00
Clerical	60¢	$1.00
Service	62¢	$1.00

66% of women who head households with children under 18 were in the labor force in 1979.

The number of female-headed households has almost doubled in the past 20 years, from 4.5 million in 1960 to 8.5 million in 1979, when one of every five mothers in the labor force was maintaining her own family. Almost one-quarter of women heading households have children under six years old, and over 56% of these mothers with pre-schoolers were in the labor force in 1979, almost double the number a decade ago.

Women who head households are employed mainly as clerical and service workers; these two occupational categories account for 57% of their jobs (clerical-34%; service-23%).

In 1979 women living in poverty constituted 12% of the total female population and 75% of all people living in poverty.

Women 65 years or older were most likely to be poverty status; of women that age, 18% were classified as poor. In contrast, of the total male population, 7.6% were poverty status.

Women work because of economic need.

Of the women in the workforce in 1979, 26% had never married, 19% were widowed, divorced, or separated, and 29% were married with husbands earning less than $15,000 a year.

The number of married women in the workforce is over 5 times as large as in 1940.

The change in distribution of married women workers (husband present) has been the most dramatic of all categories of female jobholders. In 1940, these married women comprised only 30%, or 4.2 million of all women workers. In 1979, 55.5%, nearly 24 million, of all female workers were married with husbands present.

Since 1970 the number of divorced women workers has doubled—the number rose from 1.9 million in 1970 to 4 million in 1979. The number of never married single

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women jobholders increased from 7 million in 1970 to 11 million in 1979.

The highest participation rate (74%) of any group of women classified by marital status are those who are divorced. In 1979 the labor force participation rate of women jobholders was:

Never Married	62.7%
Married, Husband Present	49.4%
Married, Husband Absent	58.8%
Divorced	74.0%
Widowed	22.6%

In 1979 full-time women workers had median annual earnings of $6,894 less than men.

Women working full-time, year round in 1979 had median annual earnings of $10,168, while men's earnings averaged $17,062. Women made 59.6¢ to every dollar made by men.

	Annual earnings		Women's earnings as percent of men's
	Women	Men	
1955	$2,719	$4,252	63.9%
1960	3,293	5,417	60.8
1965	3,823	6,375	60.0
1970	5,323	8,966	59.4
1975	7,504	12,758	58.8
1979	10,168	17,062	59.6

The median annual income of husband-wife families in which both partners were employed was $25,290 in 1979.

When the husband was the only wage earner, a family's median annual income in 1979 was $18,915. For families maintained by women, the median income was only $9,784. More than 60% of husband-wife families in 1979 had two or more earners.

In 1980, 30.7 million children under 18, or 53% of the total, had mothers in the labor force.

In 1970, 25.5 million children, or 39%, had working mothers. In 1980, 43% of all children under six years old had mothers in the labor force, compared with 29% in 1970.

In 1979 full-time women workers who were high school graduates earned less on the average than fully employed male workers who had not completed elementary school. Women workers who had graduated from college earned less than men workers with an eighth grade education.

Education	Median Annual Earnings	
	Women	Men
Completed less than 8 years of school	$7,425	$11,034
Completed 8 years of school	7,766	14,475
Completed 1-3 years of high school	8,552	15,205
Completed 4 years of high school	10,506	18,111
Completed 1-3 years of college	11,861	19,376
Completed 4 years of college	13,430	22,388
Completed 5 years of college or more	16,694	25,858

The National Commission on Working Women

The National Commission on Working Women is a non-governmental, action-oriented body. It was created to focus on the needs and concerns of that approximate 80% of women in the workforce who are concentrated in low-paying, low-status jobs in service industries, clerical occupations, retail stores, factories and plants.

Commission members are women and men representing business, labor, the Congress, the media, academia and working women themselves. As its secretariat, the Center for Women and Work implements the Commission's programs, seeks to achieve its overall goals, and serves as a national exchange for ideas, information and research related to the world of women in the workforce. The Center is a separate operational unit within the National Institute for Work and Learning, a private, nonprofit organization dedicated to "the fullest and best use of the human potential."

As a group, women in the 80% tend to be isolated and underrepresented. They are in no particular network to which they can turn for help, nor are they in touch with policymakers. The Commission aims to fill this gap by exploring and publicizing the problems and needs of working women through state and local dialogues, action programs designed to help solve these problems in innovative ways, an overall public awareness campaign, and the development of policy recommendations concerning the conditions of women in the workforce. Source for statistics: U.S. Department of Labor, 1980.

An Overview of Minority Women in the Workforce

In 1979 there were 13.5 million black and Hispanic women in the U.S. population; over 6.9 million (51.3%) were in the workforce.

In 1970 there were 4.4 million black and Hispanic women in the workforce; that number increased to 6.9 million in 1979. A decade ago, 18.9% of black women were in clerical occupations; in 1979 the percentage jumped to 28.8%. Conversely, in 1970, 19.4% of black working women were private household workers; in 1979 that number decreased to 8%. In 1979, 64% of all black working women were in clerical or service occupations. Only 11% of Hispanic women workers were in professional or administrative occupations.

In 1979 the occupational distribution of employed white, black, and Hispanic men and women (the only groups for which data were available) was:

	White		Black		Hispanic	
	Women	Men	Women	Men	Women	Men
TOTAL (percent)	100%	100%	100%	100%	100%	100%
Professional-technical (includes nurses and teachers)	16.9	16.2	12.7	8.7	7.5	8.7
Managerial-administrative (except farm)	6.7	15.2	3.0	5.6	3.7	5.5
Sales	7.2	6.5	2.8	2.0	5.3	3.3
Clerical	36.3	5.9	28.8	7.1	31.7	6.3
Craft	1.8	21.5	1.3	17.5	2.1	20.9
Operatives (including transport)	10.7	17.1	14.4	25.6	25.2	25.6
Nonfarm laborers	1.1	6.1	1.7	13.5	1.1	11.6
Service	18.3	7.9	34.8	16.7	21.8	13.5
Private household workers	2.1	0.1	8.0	0.1	2.6	0.1
All other service	16.2	7.8	26.8	16.6	19.2	13.4
Farm	1.0	3.8	0.5	3.3	1.5	4.7

In 1979 the unemployment rate for minority women was 12.3%. This was the highest rate compared to all other segments of the population.

The unemployment rate for minority women has increased since 1955 when it was 8.4%. In 1979 the unemployment rate was lowest for white males at 4.4%; the rate was 5.9% for white females, and 10.3% for minority males.

In 1979 over 40% of all black families were headed by women.

There were 5.9 million black families in the U.S. in 1979. Of these, 2.4 million were headed by women. This number was up from 1975 when the proportion of black female-headed households was 35.2%. For white and Hispanic families also, the number of women maintaining families is growing. For white families, the figure was 11.6% in 1979, up from 10.5% in 1975. For Hispanic families, it was 19.8% in 1979, up from 18.7% in 1975. In 1978, about 60% of all black and Hispanic families headed by women were living below poverty level compared with 34% of white families.

30.7% of black women lived below the poverty level in 1978.

Black women constituted the largest segment of the population that was poor in 1978. The second largest segment was Hispanic women, 20.9% of whom were living below the poverty level, while 9.5% of white women were classified as poor.

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On an average, full-time women workers in 1978 earned 59¢ for every $1 earned by men.

Hispanic women had the lowest income of any racial-ethnic group in 1978. Their income was half of white males'. In 1978, the median annual income for men and women by race was:

		Percent of White Male's
White Males	$16,360	100%
Black Males	12,530	76.6%
Hispanic Males	11,943	73.0%
White Females	9,732	59.5%
Black Females	9,020	55.1%
Hispanic Females	8,331	50.9%

In black married-couple families, 60% of the wives were in the paid labor force, compared to 47% of the wives in white married-couple families in 1979.

There were 3.2 million black married-couple families in 1979. Of those families, 1.9 million contained working wives while 1.3 million contained wives not in the paid labor force. There were 43.6 million white married-couple families in 1979. Of that number, 20.6 million had wives in the paid labor force while 23 million did not.

In 1978 the median annual income for black married-couple families was $15,913, compared to $5,888 for black families headed by women.

In black married-couple families where the wife was in the paid labor force, the median annual income was $19,073. The median annual income for white married-couple families in 1978 was $19,638. For white families headed by women, the median income was $9,911.

In 1979 there were 61.5 million children under 18 years old—31.2 million of them had mothers in the paid labor force while 29.3 million had mothers who were not.

Children Under 18 Years Old

	White	Black	Hispanic
Total children	49.5 million*	7.8 million*	4.2 million*
Mother in labor force	25.1 million	4.4 million	1.7 million
Mother not in labor force	23.7 million	3.2 million	2.4 million

*Sums do not add to exact totals since data for children in families maintained by men are not included here

NCWW Publications

A complete publications list is available from the National Commission on Working Women; write and ask for one. Please enclose a self-addressed, stamped envelope.

National Survey of Working Women. An analysis of the job-related, home-related and personal problems reported by 150,000 working women (1979). $3.00.

The Career Development Seminar for Women Office Workers. A 426-page manual for implementing an 18-hour seminar on the career development process for clerical workers. Includes instructions, exercises, and hand-out materials. $44.00.

Women At Work: News About the 80%. A quarterly newsletter published by the National Commission on Working Women. $10.00/year.

Exemplary Educational Programs for Women in the 80%. An analysis of 11 successful model programs sponsored by educational institutions for nonprofessional working women. $5.00.

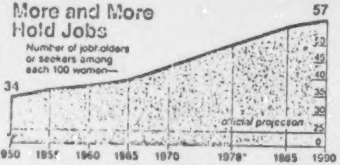
Mobility in the Marketplace. Five case studies of employer and union workplace efforts to provide career mobility for working women. $5.00.

A Focus on the Problems, Needs, and Concerns of Secretaries. An analysis of the 31,000 clerical workers' responses to the 1979 National Survey of Working Women. $1.00.

Employment Stats.

Portrait of Women's New Role in Employment

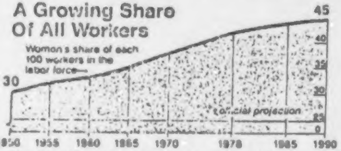
More and More Hold Jobs



All told, 41,802,000 women—the most ever—are now in the labor market, a total that is forecast to top 54 million in 1990.

*January-November average

A Growing Share Of All Workers



Thus, the nation's work force, which was two-thirds male less than 20 years ago, is fast approaching the day when it will be 50-50, half male and half female.

Note: 1978, January-November average

Who the Working Women Are

Among the approximately 38 million women in nonfarm jobs—

Race

White	87.3%
Black	12.7%

Marital status

Single	19.0%
Married	56.4%
Divorced, separated, widowed	24.6%

Mothers

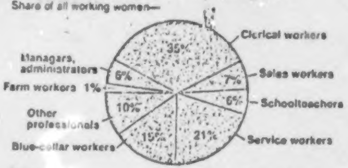
Of all women, including those on farms, with children of school age or younger—

Mothers at or seeking jobs	53%
Mothers not in labor force	47%

In addition, millions of other women work at home or in volunteer tasks each year.

Where Women Are Employed

Share of all working women—

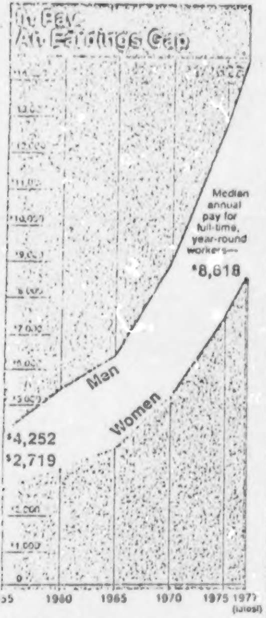


Occupation	Women employed
Accountants	239,000
Computer specialists	86,000
Engineers	34,000
Lawyers, judges	44,000
Librarians	166,000
Life, physical scientists	43,000
Personnel, labor-relations workers	161,000
Physicians, dentists, related practitioners	77,000
Nurses, dietitians, therapists	1,192,000
Health technologists, technicians	330,000
Religious workers	45,000
Social, recreational workers	270,000
Teachers	2,323,000
Technicians	170,000
Writers, artists, entertainers	405,000
Other professionals	249,000
Managers, administrators	2,151,000
Retail-sales clerks	1,630,000
Other sales workers	848,000
Bookkeepers, cashiers	2,707,000
Secretaries	3,390,000
Typists	969,000
Other clerical workers	5,649,000
Machine operators	4,096,000
Transport operators	238,000
Other blue-collar workers	1,021,000
Farmers, farm workers	474,000
Food-service workers	2,806,000
Health-service workers	1,558,000
Household domestics	1,123,000
Other service workers	2,191,000
Total	36,685,000

Note: 1977 averages. Details may not add to totals because of rounding.

Note: Figures, except when noted, are based on civilian labor force and civilian population outside institutions. Labor force includes only those aged 16 and older.

Statistics



The typical woman employe, therefore, was paid 58.9 percent of what the typical male worker earned in 1977, down from 63.9 percent in 1955.

Occupation for Occupation, Women Earn Less…

Though laws require equal pay for equal work by men and women, average pay for women still runs far below that of men in most fields, largely because of lack of seniority by women and their concentration in lower-paying tasks. What the latest official figures show for median annual earnings by full-time, year-round workers:

	Women	Men
Professional, technical workers	$11,072	$16,939
Managers and administrators	$9,804	$16,674
Sales workers	$6,272	$14,580
Retail-sales workers	$5,584	$10,265
Clerical workers	$8,128	$12,843
Craft workers	$7,765	$13,638
Operatives	$6,649	$11,600
Service workers	$5,840	$10,036
Nonfarm laborers	$7,613	$10,104
Household domestics	$2,5[illegible]0	N.A.

N.A.—not available

…But in Many Fields, They're Catching Up

These average salaries were offered to candidates for bachelor's degrees in 1978, according to the National Science Foundation:

	Women	Men
Business		
Accounting	$12,252	$12,201
General business	$10,320	$10,512
Marketing	$9,788	$10,236
Humanities and social sciences		
Humanities	$8,916	$9,792
Social sciences	$9,240	$10,392
Engineering		
Aeronautical	$14,136	$13,824
Chemical	$15,396	$15,336
Civil	$13,836	$13,248
Electrical	$14,100	$13,8[illegible]
Industrial	$13,968	$13,644
Mechanical	$14,712	$14,340
Metallurgical	$14,520	$14,544
Sciences		
Agricultural	$9,912	$10,272
Biological	$9,540	$9,840
Chemical	$12,624	$12,132
Computer science	$12,540	[illegible]2,420
Health professions	$9,900	$10,596
Mathematics	$11,784	$11,904
Other physical and earth sciences	$12,516	$12,636

Source: U.S. Depts. of Labor and Commerce; National Science Foundation

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Mr. **HAWKINS**. The next witness is Peggy Pratt, chairperson of Los Angeles Working Women.

Ms. Pratt, welcome.

STATEMENT OF PEGGY PRATT, CHAIRPERSON, LOS ANGELES WORKING WOMEN

Ms. **PRATT**. Congressman Hawkins, members of the Subcommittee on Employment Opportunities, and guests: my name is Peggy Pratt. I am the chairperson of the Los Angeles Working Women, a membership organization seeking to improve job opportunities and pay for officeworkers. We are affiliated with Working Women, the 12,000-member national organization for officeworkers.

I am here today to testify as an individual who has benefited from affirmative action programs, as well as to describe the forms of discrimination that Los Angeles Working Women has uncovered in the city through surveying working women and analyzing company affirmative action plans.

I work as a legal secretary in a large law firm. I chose the legal industry because I felt the work would be interesting and the pay is usually higher than other secretarial jobs. As a single parent, I need to earn enough money to support myself and my son and have the security of knowing that I can always find a job.

Armed with 18 years' experience in the clerical work force, a 2-year business degree and excellent typing and shorthand skills, I began looking for a legal secretarial job. It wasn't easy. I was told: "You're just not right for the job," "You don't have enough experience," "You're overqualified."

Finally, I was offered a "legal secretary trainee" position. I accepted, even though I knew younger, less experienced, less qualified white women were hired without the "trainee" title attached. I was the only black employee in the firm. This was 7 years ago. Today, there are still only a handful of minority women working as legal secretaries.

I was fully qualified for the legal secretary position, but affirmative action opened the door for me. Affirmative action works.

Women and minority employees have made career gains as a result of affirmative action programs. Women bank managers increased from 17.6 percent in 1970 to 31.6 percent in 1979. A study of the insurance industry between 1966 and 1975 found minority women moving into clerical positions for the first time, and white women moving into managerial positions for the first time.

It is important to note that this progress is a result of increased public pressure by women's and civil rights' organizations and increased Government attention to enforcement of affirmative action, particularly in banking and insurance.

Affirmative action benefits officeworkers in several other ways by requiring companies to establish equitable policies to increase training and advancement opportunities. Some of these policies are job posting, job descriptions, regular salary reviews, and career paths.

While many visible gains have been made in hiring and promotional opportunities for women and minority employees, discrimination continues to exist and if ignored, the gains we have made could easily be eradicated.

A member of Los Angeles Working Women overheard her boss—a manager in a bank and an affirmative action employer—state that he would never promote a secretary: "Yes, I have to interview them for these jobs, but I would never promote one."

Los Angeles Working Women surveyed women in the work force concerning pay, promotional opportunities, and other working conditions. The findings show that most Los Angeles employers talk about affirmative action, but do very little to seriously change the employment picture for women and minorities.

The starting salary for a clerk in the banking industry is $645 per month. On this salary, some officeworkers are eligible for food stamps. American taxpayers are subsidizing the banks' low pay levels.

Minority women, on the average, earned between $20 and $110 less per month than white women in comparable jobs and with comparable experience and education.

[Material submitted by Peggy Pratt follows:]

Los Angeles Working Women

an Organization for Women Office Workers

WOMEN OFFICE WORKERS:

A Look at the Economics of Working in Los Angeles

A FACT SHEET

Women in the Economy

Clerical work is the largest single occupational group in the Los Angeles area. Women are 80% of all clerical workers. 40% of all women working in Los Angeles are clericals.

Women work out of economic need: to support themselves; their families; or have husbands whose income is less than $10,000 a year.

Pay

66% of all women earn less than $10,000 a year, compared to only 20% of all men.

The starting salary for a clerk in the banking industry is just $600 a month. Some women on this salary are eligible for food stamps.

Older women and minority women earn between $20 and $110 less than younger, white women in comparable jobs according to LAWW's survey.

Raises for clerical workers are among the lowest for all workers. Most women reported increases of 7% (within President Carter's Wage Guidelines).

Company profit rates continue to increase. The top 100 banks in the country averaged a 27% increase in earnings over the previous year.

Cost of Living

The cost of living in Los Angeles rose more than it did nationally --- a staggering 18.7%, compared to a 14.5% increase nationally. Most office workers are earning less today than they did a year ago.

Promotions

> "I overheard a manager saying that he would never promote a secretary: 'Yes, I have to interview them for these jobs, but I would never promote one'."

- Job segregation continues to exist in Los Angeles offices. Women are channeled into traditional low paying, dead-end jobs, while men are moved into career positions.

Women are kept in the dark about promotional opportunities and job training programs. Only half of all the companies surveyed posted any job openings.

Women with years of experience are forced to train men to be promoted over them, but never given the opportunity to advance.

And those women who do get promoted are given lower pay and status in the office. An officer in a major LA bank felt that men were given company cars, offices with windows and assignments in more prestigeous areas of the bank.

Age Discrimination

Older women in the clerical workforce face double discrimination. One out of every three women working today is over age 45. The average woman can expect to work 34 years of her life.

Out of LA's top ten companies, not one company head is under 56. But a middle-age clerical is considered "over the hill".

The average legal secretary over 40 is likely to have twice the experience of her younger counterpart, but earn $83 less per month.

LAWW's survey results show older women are paid less, refused job training and promotions, and have inadequate pension plans.

Recommendations to Employers

Evaluate your workforce to ensure women and minorities are represented in all levels of employment.

Create and publish career ladders, institute job posting for all job openings, remove artifical education requirements where on-the-job experience or training is a comparable substitute, and provide accurate, written job descriptions to all employees.

Review your pay structure so that women office workers salary ranges compare with the true value of the work they perform.

Recommendations to Women

Talk with other women in your office. Compare information on pay, promotions and job training. Evaluate your company to ensure it is following LAWW's Equal Employment Plan.

Ask for access to job training programs, promotions, and pay increases. If you are denied a raise or promotion, find out why. If you feel you are being treated unfairly, contact Los Angeles Working Women for information on your legal rights on the job.

A copy of LAWW's report --- *Women Office Workers: A Report on the Economics of Working in Los Angeles* --- is available at the LAWW office. $1 LAWW Members, $2 Non-Members, $5 Institutions. Please send check along with your name and address.

Los Angeles Working Women, 813 South Hope St., Los Angeles, CA 90017 213/627-6263

Los Angeles Working Women
an Organization for Women Office Workers

813 South Hope Street, Los Angeles, CA 90017 · 213/627-6263

FACT SHEET: FIRST INTERSTATE BANK

Overview of LAWW Campaign

Los Angeles Working Women targeted First Interstate Bank, formerly United California Bank, as their major campaign for 1981. LAWW is fighting to have the bank upgrade clerical pay levels...institute effective job descriptions...establish a working grievance procedure...in essence, become a model Affirmative Action employer.

Why Target FIB:

- FIB is an economic leader in the Los Angeles business community.
- FIB is the 5th largest commercial bank in California, and the 14th largest in the nation.
- FIB employs 13,000 people, the majority of which are women.
- Women employees make up 81% of the bank's clerical staff.
- FIB enjoys a healthy rise in profits. Earnings rose 37% in 1979, and at the close of 1980, UCB's earnings were more than $600 million, of which $300 million was distributed in dividends to stockholders.
- FIB could set the pace of fair and equal employment policies in Los Angeles.

After having publicly announced our campaign, members of LAWW met with bank representatives in an attempt to bring our concerns to their attention. The bank's personnel openly expressed that they were there to listen to our questions and concerns, but were not prepared to give us any answers. They kept their word.

FIB's Employment Practices

Pay: FIB pays entry-level clericals $700 a month. At this salary, some full-time employees may be eligible for food stamps.

Women work out of economic necessity. Yet, FIB does not pay clerical employees a substantive wage recognizing this fact. And, due to a new job classification system, a secretary's salary depends upon the job of her boss.

Salaries and raises are not keeping up with the cost-of-living. Raises for clerical workers are among the lowest for all workers. But, FIB's chairman, Norman Barker, received a reported 16% raise of $53,481 last year.

Job Posting: All jobs are not listed in "Job Awareness" bulletins--specifically, managerial positions. And, some managers make it difficult for employees to transfer.

Job Descriptions: Employees report that they do not have accurate job descriptions--despite the fact that the bank's Affirmative Action plan calls for one for each job.

Grievance Procedure: The bank reportedly has a grievance procedure. Except that when an employee requested a copy from Personnel, she was told it didn't exist.

Working Women Strategy

Los Angeles Working Women has begun and will continue to use several tactics in order to win fair employment practices at First Interstate Bank. These include:

- Working with the Department of Labor during their scheduled review of FIB's Affirmative Action plan this summer and gathering information on discriminatory policies.
- Keeping employees informed of the review thru newsletters, and by operating a hot-line phone number for employee problems: 213/627-6263.
- Informing depositors of our concerns and gaining their support through petition drives.
- Meeting with state and federal regulatory agencies about FIB's policies.

Los Angeles Working Women needs your support in our fight to end discriminatory employment policies at First Interstate Bank.

LAWW Membership

LAWW is a membership organization and an affiliate of Working Women, The National Association of Office Workers. We are dedicated to upgrading the pay, job opportunities and respect of women office workers. Bank campaigns for equal employment are going on nationwide, and our affiliates in Boston and Cleveland have been victorious!

COUPON

_____I would like to join LAWW's fight for Higher Pay at First Interstate Bank.

_____I would like to join LAWW. Enclosed is $6 per year (income under $7,000), $12 per year (between $7 - $10,000), $24 per year (over $10,000).

NAME______________________ TELEPHONE (w)_________ (h)_________

ADDRESS______________________ CITY_____________ ZIP_______

COMPANY______________________ JOB TITLE______________________

Los Angeles Working Women • 813 So. Hope Street, Los Angeles, 90017 • 213/627-6263

A87

Women Office Workers:

A Report on the Economics of Working in Los Angeles

June 1980

LOS ANGELES WORKING WOMEN

$1 Members - $2 Non-members - $5 Institutions

INTRODUCTION

> "I've learned several things through my career as a secretary. First, the company is going to try to pay you as little as they can. Second, they don't want to give you a job description, because they want you to do everything. Finally, they don't want to promote you because you are too valuable as a secretary."
>
> - a Los Angeles secretary

Today, for the first time in history, more than half of all women are working in the paid labor force. One third of these 44 million women workers are employed in the clerical workforce, the largest single occupational group for women.

This report shall address major concerns of women employed in Los Angeles businesses: pay; job opportunities; and respect for the skills and experience they bring to their jobs.

The findings contained in this report are based on government data, newspaper articles, annual reports, in depth interviews with women office workers and the results of job surveys distributed to 10,000 office workers in downtown Los Angeles.

The findings revealed in this report are a serious indictment of Los Angeles employers. The report documents discriminatory patterns and practices that continue to exist, despite the passage of equal employment laws nearly 20 years ago.

-Pay levels for women entering the banking industry begin at $600 per month. 66% of all women earn less than $10,000, compared with 20% of all men.

-Women are segregated into traditional low paying, dead-end jobs. 40% of all women working in Los Angeles are clericals.

-Older women workers face additional discrimination. Older legal secretaries earn an average of $83 less per month than younger legal secretaries, but have twice the experience.

Women office workers play a central role in the Los Angeles economy. Yet, they are poorly paid, given little or no access to training and promotional opportunities, nor are their office skills treated with the respect they deserve.

We would like to thank all of the women who contributed to this survey --- by sharing their work experiences with us and by helping to compile the results. A special thanks to Gail Hirayama, a USC student intern, for gathering data and compiling the survey results.

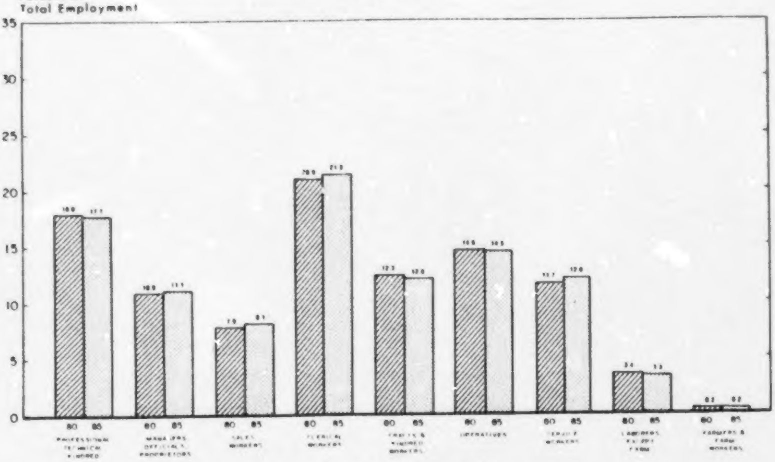
A PROFILE OF WORKING WOMEN IN LOS ANGELES

More than one million women are in the Los Angeles labor force. 10.6% of these women workers are Black and 14.6% are Hispanic.

"Paper industries" such as banking, insurance, accounting and law dominate the Los Angeles business economy making clerical the largest single job category. One out of every five workers is a clerical worker and nearly 80% of those are women.

40% of all women in Los Angeles work as secretaries, typists, file clerks or in other office positions. Within the next 5 years this number will increase.

OCCUPATIONAL PROFILE FOR LOS ANGELES COUNTY
1980-1985



Source: California Employment Development Department

WHY WOMEN WORK

Women work for the same reasons men do --- out of economic need and for career satisfaction. Two thirds of the women in the labor force in 1977 were never married, widowed, divorced or seperated and worked to support themselves, and their families or to supplement the low incomes of their husbands.

For minority women, four out of every five in the workforce supported themselves or had husbands whose incomes were $10,000 or less per year.

WORKING MOTHERS

The traditional American family consisting of a male working, a non working mother and two children is a myth. Only 6% of the 42 million American families actually conform to this stereotype.

By 1990, two of three mothers in the United States will hold jobs. Today, 40 percent of married women with young children work outside the home.

Women heads of households are more likely to have incomes below the poverty level than male heads of households. One third of all familes headed by women had incomes below the poverty level.

UNEMPLOYMENT

Unemployment levels for women remain fairly low due to the expansion of clerical job opportunities. However, Hispanic and black women have somewhat higher unemployment due mostly to fewer opportunities in the clerical workforce. In addition, women over age 40 tend to be unemployed an average of six weeks longer than younger women.

UNEMPLOYMENT STATISTICS OF WOMEN

White women	6.2%
Black women	9.5%
Hispanic women	7.9%

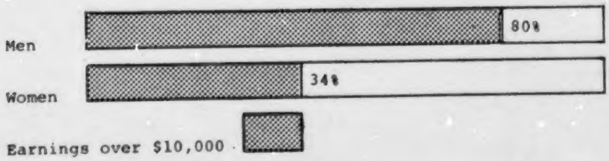
Source: U.S. Department of Labor

SALARIES

In all job categories, pay for women is lower than pay for men. On the average, women earn 61 cents to every one dollar a man earns. This pay gap between men's and women's wages is wider today than it was 25 years ago.

Median (midpoint) pay levels for men are $266 per week compared to median pay levels for women of $187 per week. 66% of all women who worked full time earn less than $10,000 per year, compared to 20% of all men.

EARNINGS OVER $10,000



MEDIAN WEEKLY INCOMES MARCH 1980

	Men	Women	Wage Gap
White	$324	$202	$122
Black	$239	$186	$53
Hispanic	$236	$175	$61

According to LAWW's survey results, salaries for women in banking are lower than those in any other industry. Women working full time in major Los Angeles banks earn entry level salaries of $600 per month. Fulltime bank workers are eligible for food stamps, despite the fact that bank profit rates rose an average of 27% or more in the past year.

Bank secretaries averaged $1031 per month, $100 less than all secretaries surveyed. Technical employees in banking earned nearly $200 less than all technicals surveyed.

Pay varied considerably within the clerk, secretary and technical categories for all respondents. However, minority women generally earned less than the overall averages for each job.

Black women earned $110 less per month than the average secretary, but the pay gap improved for black women in technical jobs. There they averaged $1223, compared to $1267. Hispanic women are more likely to be employed as clerks or secretaries, yet earn $100 less per month in each category. Asian women earned slightly more than the average in the technical category, but less in all others.

JOB SURVEY RESULTS

Job Category	Average Salary	Range
Clerk	$814	$600 - $1200
Receptionists	$835	$700 - $1000
Secretaries	$1143	$600 - $1700
Computer Operator	$1048	$800 - $1550
Technical*	$1267	$840 - $1700
Supervisors	$1195	$1000 - $1495
Professionals	$1497	$1000 - $2500
Managers	$1837	$900 - $3700

*Technical category includes claims adjusters, claims representatives, financial analysts, buyers & other similar job titles.

Women over age 40 earned less on the average than younger women in nearly all categories. Years of experience and length of service have little to do with the salary women receive.

90% of those surveyed felt that their companies could afford to pay higher salaries, but did not because of high pay to executives (73%), to keep costs down (60%), or to keep profits high (44%).

Women's wages have little to do with how successful or profitable their company is. Atlantic Richfield's earnings rose 32% in 1978, yet employees received a scant 5% cost of living increase. However, most companies did not give any cost of living increase despite huge profits. (See Appendix B for furhter information on company profits).

RAISES AND THE COST OF LIVING IN LOS ANGELES

The cost of living in Los Angeles for office workers rose a staggering 18.7% from April 1979 to April 1980, compared with a 14.5% increase nationally.

Raises for office workers are not keeping pace with inflation. Most women reported raises averaging 7% to keep within President Carter's Wage and Price controls.

The following chart shows office workers raises have been amongest the lowest for all workers.

PERCENT INCREASES IN AVERAGE HOURLY EARNINGS

Occupational Group	1975/76	1976/77	1977/78	1978/79	Average
Office/clerical	7.3	7.4	7.8	9.8	8.
Electronic Data Processing	7.0	6.6	9.6	8.6	8.
Skilled Maintenance Worker	7.4	8.8	8.1	9.7	8.5
Unskilled Plant Worker	12.4	6.7	8.2	11.7	9.8

Source: U.S. Department of Labor

EDUCATION

Does higher education mean higher wages? Many think so, but statistics show otherwise. A truck driver with 9 years of education earns 38% more than a secretary with over 12 years of education.

EARNINGS AND EDUCATION LEVELS OF MEN AND WOMEN

Years of School Completed	Men	Women	Gap
Grades 1-8	$12,083	$6,564	$5519
High School	$15,434	$8,894	$6540
College	$19,603	$11,609	$7994
Graduate Work	$21,941	$14,338	$7603

Source: U.S. Department of Labor 1977

PROMOTIONS

> "I overheard a manager saying that he would never promote a secretary: 'Yes, I have to interview them for jobs, but I would never promote one.'"

"Women's work" --- clerical secretarial, and other office occupations --- are low paying, dead end jobs. Job segregation in offices is perpetuated by: hiring practices that channel men into managerial and professional positions and women into clerical work; policies that keep women in the dark about promotional opportunities; and women being forced to train men to be promoted over them.

Women are 80% of the clerical workforce, yet are only 35.5% of the professionals and 19.7% of the managers. The following chart shows women are concentrated in clerical, sales, and service job categories, while men are a majority in management, professional and skilled occupations.

OCCUPATIONS FOR MEN AND WOMEN IN LOS ANGELES

Job Category	Men	Women
Professional	64.5%	35.5%
Managers & Administrators	80.3%	19.7%
Clerical	20%	80%
Sales	63.3%	36.7%
Craftsmen	95%	5%
Service	39.6%	60.4%

Source: U.S. Department of Labor

HAVE YOU EVER BEEN DENIED A PROMOTION?

> "I went to work in a large bank because I thought there would be lots of advancement. But after 6 years, I haven't received any promotions. Blacks are denied promotions in certain departments of the bank."
>
> "My company posts job openings, but only for secretarial and clerical positions. I am looking for a job that will lead to advancement."
>
> "Jobs are posted for the most part, but I have not even been interviewed for any of the four jobs I have applied for in the past year. I don't think they want to train a 52 year old woman on data processing equipment."
>
> "My boss is comfortable with me as his secretary and has refused to allow me to transfer."
>
> "I work in a law office, and there isn't anywhere to go. However, I would like to see some changes made in how the jobs are structured----that way there could be some promotional opportunity."

Over two thirds of the women responding to the job survey felt that promotional opportunity was a serious issue. More than half stated that there were opportunities to advance within their offices, but that they had been passed over for advancement.

BANKING --- A CASE STUDY IN PROMOTIONS

Employee X is 25 years old and has a liberal arts college education. X began working in the banking industry as a teller two years ago. After several months on the job, X was ready for a promotion and approached the bank manager about opportunities. X was promoted to a technical position within Operations. Today, X is a manager of a department and an Assistant Vice President.

Employee Y is over 40 and began working in the bank 15 years ago as a clerical worker. After several years, Y was promoted to a technical position, but was not given the title and salary increase that others doing the same job were given. Finally, after 5 years of doing the work and asking for a title and salary change, Y was given a title and a 6% increase.

Can you guess which employee is a man?...Which employee is a woman? Nearly all women in the banking industry can identify with employee Y's frustration and disappointment.

Nationally, women are 63% of the bank workforce, yet 87.6% work in clerical positions. For minority women, more than 90% work in clerical jobs.

In recent years, banks have tried to lead us to believe that they have made great strides in expanding employment opportunities for women. However, our survey returns do not fully support the banks' claims.

> "When a male supervisor left, I was told that the position was eliminated. Yet, another man with no experience was hired given the desk and told he would be made supervisor."
>
> ---a bank employee with 34 years experience

> "I applied for a promotion recently, but was told that someone else from outside the bank was hired for the position because he had more experience. When I asked what I could do to improve my opportunities, they could not tell me any areas in which I was weak."
>
> ---a black woman with over 5 years bank experience

> "I was recently made an officer in my bank. I sit in the same desk, earn the same salary, and the only addition to my job duties is supervising five secretaries in my area. Male officers get jobs with more respondsibility, offices with windows, and higher salaries."
> ---a bank officer with 10 years experience

According the the Equal Employment Opportunity Commission, the job category of officers and managers rose 80.8% in the country's 100 largest banks, compared to a 26.5% rise in the office and clerical job category. This huge increase in officers and managers may indicate that banks are changing women's job titles ---not their pay, duties, or responsibilities.

Women and minorities in banking are confined to the lower ranks of management. 24% of all bank jobs are classified as officials and managers, but a much smaller number involve major management responsibility. Women managers are found in personnel and branch banking, but not in commerical lending. Senior management is still in the hands of white males.

A look at senior management and Board of Directors of five of the top banks in Los Angeles show women barely visible. Out of a possible 109 Board of Director positions only 7 were filled by women. One of the 77 senior management positions was filled by a woman.

The banking industry plays a decisive role in the nation's economy. They could be using this position of influence to set a high standard for fair and equal employment policies. However, bank pay and advancement policies set a poor example.

DOES LIFE BEGIN AT 40? A LOOK AT AGE DISCRIMINATION IN EMPLOYMENT

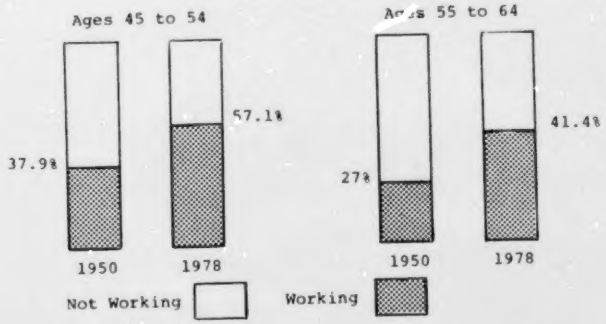
> "People say that life begins at 40, but for working women like me, that's far from the truth. After putting in years of dedicated service, I've been passed over for promotions and raises, have trained younger men to do more highly-paid jobs, and now at age 56, I'm looking forward to retiring on less than $500 a month."
>
> ---a Los Angeles bank secretary

One out of every three women who work is over 45. And these numbers will continue to increase over the next several decades. Predictions indicate that 50% more women between the ages of 45 and 54 will seek employment by the end of this century.

In 1978 a majority of women between 45 and 64 worked, and two of every five women 55 to 64 were employed. The percentages increase for minority women: 60% of minority women between 45 and 54 worked and 43.6% of minority women between 54 and 65 worked.

LABOR FORCE STATUS OF OLDER WOMEN

1950 to 1978



Source: U.S. Department of Labor

Not only are more women entering the job market, but women are remaining in the labor force longer. The average woman can expect to work 34 years of her life, an increase of 9 years since 1973.

As a working woman grows older, she is faced with double discrimination on the job. The following section outlines the problems that many mature women workers face on the job: low pay, poor advancement opportunities, and a lack of respect for their skills and experience.

Promotions

> "Yes, there are opportunities to advance here at the bank. . .but one must possess a degree, or know the 'right' people, or be of a desirable age --- they don't want to waste time training an older person."
> ---a bank secretary

Only 13% of women over 35 are in managerial or administrative jobs. Most are in clerical or service jobs, and there they stay until retirement. In general, the occupational distribution of older women is similar to that of younger women. However, mature minority women are more likely to be in service work than younger minority women.

Those women over 40 responding to the job survey support the statistical data on advancement opportunity. 42% stated that job training opportunities are nonexistent for older women. Training that does exist is for "job-related" courses only --- such as typing, stenography, stress management --- and not useful in creating a career ladder for advancement out of the clerical job classification.

One out of every 4 respondents had been denied promotions they felt they deserved. According to the Department of Labor, older workers are more willing to learn new tasks, but rarely get the opportunity.

Pay

Women, over 40, who work fulltime earn less than women 25 to 40, despite years of experience and length of service. 64% of women over 40 responding to the survey felt that starting pay levels in their companies were close to, or more than theirs. One glaring example is that of secretaries' pay in the Los Angeles legal industry. Women over 40 earn, on the average, $83 less per month than younger women.

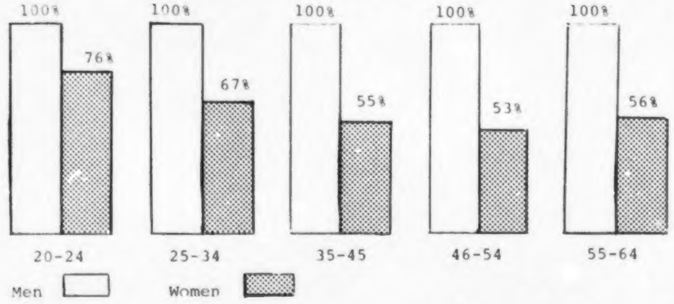
LOS ANCELES LEGAL SECRETARIES

	Average Salary	Average Years of Experience
Women under 40	$1253	3 years
Women over 40	$1170	6 years

Salaries in all industries seem to have little to do with work performed, educational achievement, years of experience or loyalty to a company.

The pay gap between men and women overall is significant. However, when you compare the average earnings of older women and older men, we find women earn 53% of what men earn. The following chart indicates pay disparities of men and women at all ages.

COMPARATIVE EARNINGS BY AGE GROUPS



Source: U.S. Department of Labor

Retiring to a Life of Poverty

Nearly 75% of women workers in private industry are not covered by pension plans. But, covered or not, 90% of women in private industry over 65 never receive a penny in pension benefits. The average woman gets a mere $80 a month in pension payments.

Women employed in large businesses such as insurance and banking generally have pension plans. However, employees usually must wait up to 10 years to be guaranteed a pension. This penalizes women in low-paying, dead-end occupations, who frequently are force to change jobs in order to get adequate pay.

> "The company (insurance) tells us that our benefits are better than most other companies. I'm not sure that's true, but after 10 years I can't afford to lose what I have."
> ---an insurance accounting clerk

Women employed in law firms, doctors' offices, and other small companies fare much worse when it comes to a secure retirement.

A majority of legal secretaries do not have pension plans at all.

> "I don't have a pension plan. I'm told the money that would be put aside for a pension plan is included in my salary ($1400 per month)."
>
> \- a legal secretary

> "I have a pension plan, but I don't know if it is adequate or not. Several months ago, my boss told me he had changed the plan, but he refuses to tell me the specifics."
>
> \- a legal secretary

Social security benefits usually add to a private pension plan, allowing the retired person to maintain a decent standard of living. The average woman living alone retires with social security benefits of about $223 per month.

For minority women 65 and over, social security has represented 85% of their retirement income. 62% of black women 65 and over and who live alone live below the poverty level.

In an inflationary economy, no one can be certain if their pension plan is going to be adequate, but for most women retirement means a life of poverty.

It's not easy for any woman --- young or old --- to receive fair treatment. But as a working women grows older, she's faced with ever more severe problems on the job. Out of L A's top ten companies, not one company head is under 56. But a middle-age clerical is considered "over the hill".

Age discrimination and retirement are problems that affect all women workers, if not today, then tomorrow.

SURVEY RESULTS

The following section contains the results of the job survey under the section "Job Equity". Policies such as job posting and job descriptions are necessary to insuring equal employment opportunity. Equal benefits and equal pay are the law, yet some respondents did not feel their company followed these laws.

Do you believe you receive the same benefits as male employees?

A majority of survey respondents (62%) felt that they received the same benefits as male employees. However, a least one company offers male employees health benefits for their wives, but does not offer female employees health benefits for their husbands.

Do you believe that men and women are paid equally for doing similar work?

Nearly 60% felt that men and women were paid equally for doing the same job, while commenting that men were rarely found in clerical job categories.

Does your company post all job openings?

Only 43% of all companies surveyed posted any job openings. Most companies post only entry level and clerical job openings. Upper level positions are filled by personnel, outside advertising or recruitment.

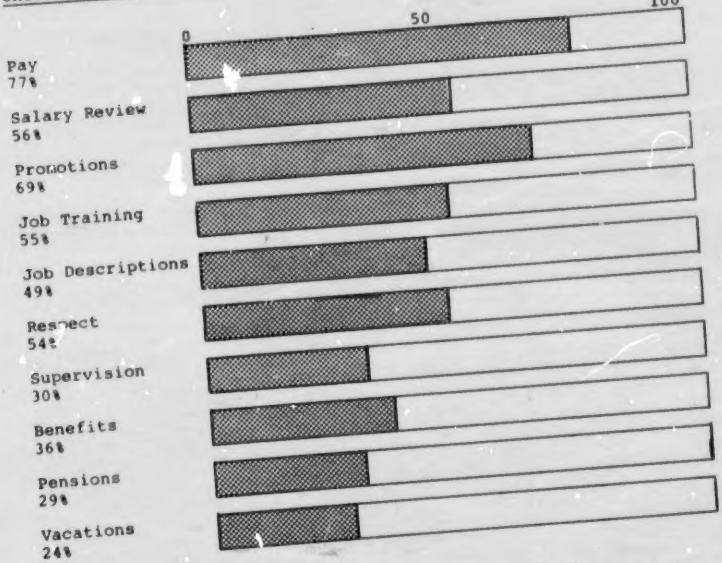
Do you have a job description? Is it accurate?

73% of all women stated that they had job descriptions. Of these only 23% felt that they were accurate. For most women, writing their own job description was the best way to ensure it was accurate.

Do you have to do personal work for your boss?

29% of the survey respondents did personal work for their bosses. When looking only at secretaries, the percentage doubles. Getting coffee, lunches, doing personal banking, typing and shopping were the most common duties. Only in rare instances were women paid extra for doing personal work.

Check all the issues that need improvement in your office.



HOW TO RATE YOUR COMPANY *

Company	Job Posting	Job Descriptions	Advancement
Adams, Duque, Hazeltine	none	some, not accurate	law firm, no advancement
Atlantic Richfield Company	some, but not all jobs	yes, majority not accurate	yes, but job training and promotions are serious concerns
Bank of America	some, but not all jobs	½ had job descriptions, ½ did not	mixed reports, people hired from outside the bank
Getty Oil	none	none	lateral moves only
Gibson, Dunn & Crutcher	none	some, accuracy varied	unsure, only within secretary levels
Occidental Life Insurance Company	none	yes, most not accurate	yes, but mostly within clerical job classifications
O'Melveny & Myers	none	some, accuracy varied	some, especially from trainee to secretary
Pacific Telephone & Telegraph	some, non-management	yes, most not accurate	some, sex & race discrimination were problems
Security Pacific National Bank	only clerical	some, accuracy varied	yes, but mostly within clerical job classifications
Transamerica	none	none	withing clerical job classification
United Bank of California	most jobs are posted	yes, accuracy varied	yes, training was considered a serious problem

*Based on survey results from these companies.

SURVEY FINDINGS

1. Women play an important role in the Los Angeles economy. One out ot every five jobs in Los Angeles is a clerical job. Women are 80% of the clerical workforce.

2. Women work out of economic need: to support themselves; their families; or have husbands who's incomes are under $10,000.

3. Women are segregated into low paying, dead-end jobs. 40% of all women working in Los Angeles are clericals. Women begin their careers in the secretarial pool and their they stay. Our survey results indicate few opportunities for advancement exist within most offices.

4. Older women in the clerical workforce face double discrimination. One out of every three women office workers is over 45. The survey results indicate older women earn less than younger women and have fewer opportunities for training in new areas.

5. Low pay is a serious issue for women office workers. Clerks in the banking industry earn entry level salaries of $600 per month. Minority women average between $20 and $110 less per month than white women in comparable jobs. Salary increases for all office workers are not keeping up with the increase in the cost of living in Los Angeles.

RECOMMENDATIONS TO EMPLOYERS

1. Employers should evaluate their workforce to ensure that minorities and women are represented in all levels of the company. Employers should monitor their hiring, training and advancement policies to ensure they are equitable.

2. Employers should inform all managers and supervisors of their Equal Employment Program.

3. Employers should utilize minority and women employees within the company by:

   a. Create and publicize career ladders that enable employees to advance within the company;

   b. Institute job posting for all job openings. Allow all employees who feel they are qualified to apply, review all applicants qualifications, and inform all those who did not receive the job why they did not qualify;

   c. Remove artifical education requirements where on-the-job experience is a comparable substitute;

   d. Provide promotions and access to training programs to all employees including older working women;

   e. Provide accurate, written job descriptions to all employees and review them periodically for changes.

4. Employers should review their pay structure to ensure it is equitable to all employees by:

   a. Institute regular salary reviews;

   b. Institute regular merit increases and cost of living increases;

   c. Publish salary ranges and grade levels for all positions.

RECOMMENDATIONS TO WOMEN OFFICE WORKERS

1. Evaluate your company on the following criteria.

   a. Does your company have the following policies:

      -written, accurate job descriptions;
      -job posting for all positions;
      -job training programs all employees are informed of;
      -written grievance procedure;
      -written benefits booklet that includes sick days, insurance plans, pension plan, and other company benefits;
      -written salary ranges and grade levels for all jobs;
      -written equal employment program.

   b. Are there women and minorities in top decision making positions?

   c. Are you aware of opportunities to advance in your company?

   d. Do opportunities cease once you reach "middle age"?

2. Ask for pay increases. Describe the added duties you have taken on and any other reasons you feel you deserve a higher salary.

3. Ask for access to job training programs, a job title change, or a promotion. Utilize women already in those positions for advice on training or education.

4. If you are denied a raise or promotion, find out why --- then correct any problem areas and ask again.

5. If you are not getting anywhere in your company, ask other women if they are facing the same problems. Your company could be illegally discriminating against you.

APPENDIX A - THE LAWS & ENFORCEMENT AGENCIES

Equal Employment Opportunity Commission (EEOC)
3255 Wilshire Blvd., Los Angeles, CA

213-688-3400

The EEOC investigates discrimination complaints, attempts to resolve them through conciliation, or brings charges against the employer. If you feel you are being discriminated against because of your sex, race, age, color, religion or national origin, you can file a complaint with the EEOC.

The EEOC enforces the following laws.

Title VII of the Civil Rights Act of 1964 - Forbids discrimination on the basis of sex, race, color, religion, and national origin in terms and conditions of employment.

Age Discrimination in Employment Act - This Act prohibits employers from discriminating on the basis of age against any person between the ages of 40 and 70 in hiring, firing, promotion, or other aspects of employment. The law applies to employers of 20 or more persons.

The Equal Pay Act of 1963 - This law states that a woman may not be paid at a lower rate than a man who is doing substantially the same work if the jobs require equal skill, effort and responsibility. The jobs do not have to be identical or have the same title.

U.S. Department of Labor
Office of Federal Contract Compliance Programs (OFCCP)
845 S. Figueroa, Ste. 550, Los Angeles, CA 90017

213-688-4961

The OFCCP enforces affirmative action in companies with contracts with the government. On a yearly basis, they review company affirmative action plans, conduct on site investigations and conciliate with companies to end discrimination. If contractors refuse to conciliate, the government may cancel their contract.

Executive Order 11246 (Affirmative Action) - This order provides that a company contracting with the federal government must agree not to discriminate against any employee or applicant because of sex, race, color, religion, or national origin. Every contractor with 50 or more employees and $50,000 or more in contracts must develop a written affirmative action plan which spells out now the company intends to end discrimination.

Most large businesses do business with the federal government. For information on whether your company is a federal contractor call the OFCCP.

U.S. Department of Labor
Wage and Hour Division
300 N. Los Angeles Street, Los Angeles, CA

213-699-4972

Overtime - All employees covered by the Fair Labor Standards Act must be paid time and a half for any hours worked in excess of 40 hours in one week (any 7 day period). Generally all clericals and hourly paid employees are covered by this law.

National Labor Relations Board (NLRB)
11000 Wilshire Blvd., Los Angeles, CA

213-924-7351

The National Labor Relations Act - The NLRA guarantees employees the right to organize themselves to form or join unions or to engage in other group activity for collective bargaining or mutual aid or protection. It makes illegal any employers' attempt to intimidate, coerce, or harass an employee for participating in such activies.

Any employee acting with or on behalf of other employees to improve working conditions is covered by this law. You do not have to be unionizing to be protected.

Fair Employment Practices Commission - (FEPC)
322 West 1st Street, Los Angeles, CA

213-620-2610

The Fair Employment Practices Commission enforces state anti-discrimination laws which are comparable to federal laws enforced by the EEOC.

Employment Development Department
1525 S. Broadway, Los Angeles, CA

213-744-2230

The Employment Development Department handles disability claims and unemployment claims.

Division of Occupational Safety and Health
3460 Wilshire Blvd., Los Angeles, CA

213-736-3041

The Occupational Safety and Health agency handles complaints around health and safety issues in your office.

APPENDIX B - COMPANY INCOME

Company	1977	1978	Percent Increase
Atlantic Richfield	$11,413,440	$12,738,809	32%
BankAmerica Corp	$376,276,000	$497,920,000	25.4%
Lloyds Bank	$6,278,000	$10,633,000	69%
Pacific Telephone	$340,214,000	$335,300,000	1.5%
Security Pacific National Bank	$100,638,000	$132.907,000	32%
Transamerica	$172,548,000	$208,310,000	21%
Union Bank	(1978) $26,758,000	(1979) $34,078,000	27%
United California Bank	$45,700,000	$63,500,000	39%
Wells Fargo Company	$85,361,000	$110,146,000	29%

Source: Company Annual Reports

REFERENCES

Los Angeles County: Manpower Information for Affirmative Action Programs, May 1979, California Employment Development Department

Projection of Employment by Industry and Occupation, 1980 - 1985, Los Angeles - Long Beach Standard Metropolitan Statistical Area, California Employment Development Department

Most Women Work Because of Economic Need, 1977, Women's Bureau, U.S. Department of Labor

Wage Trends for Occupational Groups in Metropolitan Areas April 1977 to April 1978, U.S. Department of Labor

Area Wage Survey - Los Angeles-Long Beach, California Metropolitan Area, October 1979, U.S. Department of Labor

Women who head families, 1970-77: their numbers rose, income lagged, Beverly L. Johnson, U.S. Department of Labor

20 Facts on Women Workers, 1978, U.S. Department of Labor

Women in the Labor Force: The Early Years, The Middle Years, The Later Years, Nov 1975, U.S. Department of Labor

Mature Women Workers: A Profile, 1976; The Earnings Gap Between Women and Men, 1976; Women with Low Incomes, 1977, U.S. Department of Labor

Hidden Assets: Women & Minorities in the Banking Industry, 1980, Working Women: A Special Report on Older Women Workers, 1980, by Working Women, National Association of Office Workers

Los Angeles Times articles: "66% of Mothers Expected to Be Holding Jobs by 1990", 9/25/79,"Inflation Outpaces 8% Rise in Median Family Income", 5/30/80

Mr. HAWKINS. Thank you, Ms. Pratt. Ms. Pratt, you were hired as a trainee, I think you said. What is your present classification?

Ms. PRATT. I am a legal secretary, sir.

Mr. HAWKINS. Full-fledged one?

Ms. PRATT. Right. Now I am. After 7 years. It took not the whole 7 years, but I have been a full-fledged one for about 4.

Mr. HAWKINS. Took about 3 years?

Ms. PRATT. In training.

Mr. HAWKINS. The others who were hired at the same time—of course, you were the only one hired as a trainee at that time?

Ms. PRATT. Right. After I got into the company, sir, I found out that there were many white women hired, that had no previous legal experience. They were legal secretaries from the start.

Mr. HAWKINS. You still work for the same company?

Ms. PRATT. No, I do not.

Mr. HAWKINS. I see.

Ms. Hirano, you indicated on page 5 of your statement one of the areas to be considered is the expansion of avenues of affirmative action to the industries of garment workers, cannery workers, and farmworkers. What is the situation with respect to garment workers? I thought they were currently covered.

Ms. HIRANO. I think that although they may be covered as far as the law, what happens in practice, I think, is another story. I think that if you look at a number of the garment industry and it has been shown in a number of things that have been reported in both the press as well as in the kind of enforcement that has been done, that a large number of women are still being paid for piecework which allows them to be paid a very small amount of wages and does not allow them to move into a higher paid kind of job.

We have done a study in regards to farmworkers in the State and found that for farm working women, that they as well were primarily in the lower paid jobs and were not moving up the ladder as far as some of the higher paid jobs that are available within the farming area.

I think although the principles of affirmative action have been applied in certain kinds of job classifications, there is a large number which are still predominantely women.

Mr. HAWKINS. The practice is then within the industry that cause affirmative action not to be applicable and not to operate effectively?

Ms. HIRANO. That is correct.

Mr. HAWKINS. Mr. Weiss?

Mr. WEISS. Thank you very much, Mr. Chairman. I thought it was excellent testimony. I have no questions.

Mr. HAWKINS. Mr. Washington?

Mr. WASHINGTON. No questions, Mr. Chairman.

Mr. HAWKINS. I, too, would like to commend both witnesses for the very excellent statements made and certainly to indicate that you have, I think, done an excellent job of bringing in a very personal way the value of hearings such as this. We are tremendously benefited from the testimony. I am very pleased, Ms. Pratt, that you have at least gotten a promotion after all these years and certainly to commend you on having stuck with it and having given great faith and hope to the rest of us that maybe we are doing something in attempting to save the affirmative action and the other programs that have been so helpful in individual cases.

Ms. PRATT. Thank you, sir.

Mr. HAWKINS. Thank you very much.

There being no further witnesses, we will conclude the hearing. The next hearing will be in Washington, D.C., and will be announced.

Before we conclude, I would like to have included in the record at this point a letter from Mary Cohen of South Gate, Calif.

That will be included in the record at her request.

[Whereupon, at 1:45 p.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

To Congrosman Hawkins
Chairman, Subc. on Emp. Opps Aug. 5, 1981

Mr Reagan! and the Congressmen who Voted with ~~you~~ him

~~They~~ say ~~y~~ the Budget Cuts are going to help the people realize their dream. The dream every human being should not have to only dream about, but it should be a natural expectation. the dream of having a full time job, owning a modest home with a small piece of land to raise flowers, fruit and vegetables on. The dream of putting food in their stomachs, and Clothing on their backs. A low-Cost Car to get to work, shop and occasionally take their familys to the Park. Is that so much to ask for. Well with your Budget Plan, only the ones making $50,000 and over, will be able to realize their dream. You are taking Health and Welfare Care away from Our future adults, (the Children), and make weaklings, Criminals and degenerates out of them. Is that the kind of Adults you want. Is that what you Call improving the economy? You've cut the Ceta Program, which took the Youth off the streets. Now you cut Clinics people were depending on because they could not afford Going to Hospitals.

Aug. 5, 1981

When you got shot, you immediately had Care and protection which saved your life. What are the Common people to do when they haven't the money, or a place to go, when they need medication and Health Care. Will you take Care of them? Will Howard Jarvis take Care of them? No, a thousand times No. Our troubles in California started when Howard Jarvis talked people into accepting his Proposition "13". Now you are Clinching our doom with your Military Budget Increase and Cutting the essential programs like Medical Cuts, Cuts in Schools, Police and Flood Control programs. I wish you would re-evaluate your Priorities and put the ~~(Budget)~~ budget Cuts where they will hurt the Least. Such as not spending money to re-decorate the White House. Let the Officials drive economy Cars, without Chauffeurs. You tell us to economize. How about showing us a Good example by economizing yourself.

Our five Los Angeles County Supervisors say they have to accept the Pay raise, because it is a Law. Will Can you visulize the amount of money we Can save the ~~city~~ County of Los Angeles if the Supervisors say NO, we have to Conserve in all Areas.

III

Aug. 5, 1981

Let us do our part by refusing the raise thus saving money to be used in essential areas, such as Hospitals, Clinics, etc. That should make it better for people in General.

If you intend to go thru with the Social Security Cuts, and raising the age limit of retirement, I guaranty you will have a revolution situation on your hands, as things will get Completely out of Control. After all, the people worked hard and long to save that money thru the "Social Security Program". Doing without many pleasures, thinking when they retire, they will have some security and maybe a little luxuary. I hope you will heed the Crys of the American people, and let them live in Peace.

A Very Concerned Citizen
of California—
Respectfully
Mary Cohen
1829 St. James Ave #F.
South Gate, Ca. 90280

STANFORD LAW SCHOOL

August 11, 1981

Mr. Edmond Cook
Subcommittee on Employment Opportunities
U. S. House of Representatives
Room B-346A
Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Cook:

There are four minor errors in the statement I mailed you on August 10th on proposed changes to Title VII. On line 1 of the last paragraph of page 1, "aggrevated" should read "aggravated". On line 8 of the first paragraph of page 2, "other's" should read "others,". On line 12 of the second paragraph of the same page, "applied" should read "applies". Finally on line 4 of the paragraph of page 5, "See" should read "see".

I would appreciate my paper reflecting these changes before it becomes part of your record. I would also appreciate receiving a copy of the hearings.

Thank you very much.

Sincerely,

Miguel Angel Mendez

Miguel Angel Mendez
Associate Professor of Law

MAM/pr

Crown Quadrangle Stanford University Stanford California 94305

STANFORD LAW SCHOOL

August 10, 1981

AUG 1

Mr. Edmond Cook
Subcommittee on Employment Opportunities
U. S. House of Representatives
Room B-346A
Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Cook:

I have enclosed the remarks I would have presented at the subcommittee's Los Angeles hearing on August 14th. I regret that other obligations preclude my attending the hearing and responding to the members' questions.

I hope that my remarks will help the subcommittee find ways to strengthen Title VII as it applies to disparate treatment cases.

Sincerely,

Miguel Angel Mendez

Miguel Angel Mendez
Associate Professor of Law

MAM/pr

Enclosure

Crown Quadrangle Stanford University Stanford California 94305

STANFORD LAW SCHOOL

TITLE VII AND INTENTIONALITY

by Miguel Angel Mendez,
Associate Professor of Law,
Stanford Law School

Until the Supreme Court's recent decision in Texas Dept. of Community Affairs v. Burdine, 101 Sup. Ct. 1089 (1981), the allocation of the burden of proof between parties to disparate treatment cases brought under Title VII was at best unclear. The uncertainty stemmed from the Court's use of imprecise terms in defining the burden of proof as outlined in the seminal case, McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). In that case the Court announced a three-step rule to govern the order of proof and the allocation of the burden of proof in disparate treatment cases.

As a first step the plaintiff must offer evidence "(i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications." Id. at 802. Once the plaintiff carries this "initial burden," step two shifts the burden to the employer "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." Id. If the employer meets this burden, then as a third step the plaintiff "must. . . be afforded a fair opportunity to show that the [employer's] stated reason for [the plaintiff's] rejection was in fact pretext." Id. at 804.

McDonnell Douglas, however, failed to distinguish between the burden of producing evidence and the risk of nonpersuasion. Thus, while it was fairly clear that the plaintiff had to produce sufficient evidence of each of the four factors enumerated in McDonnell Douglas to avoid an adverse directed verdict at the conclusion of his case-in-chief, it remained uncertain which party bore the risk of nonpersuasion on the existence or nonexistence of discriminatory intent at the close of the evidence.

The uncertainty was aggravated by two subsequent decisions -- Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978) and Board of Trustees v. Sweeney, 439 U.S. 24 (1978) (per curiam) -- which not only failed to make this vital distinction but which suggested that some species of presumption was triggered if the plaintiff produced sufficient evidence to establish his prima facie case. Although it was clear that the presumption shifted to the employer the burden of producing evidence to rebut the presumed fact -- namely, that the employer's job action was inspired by a motive to discriminate against the employee in violation of Title VII --, the decisions did not say which party ultimately bore the burden of persuading the trier of fact of the existence or nonexistence of discriminatory intent. The inevitable result was inconsistent lower federal court decisions. Some held that the burden of persuasion on the issue of intent shifted to the defendant; others, that it shifted initially to the employer and then returned to the employee; some, that only the burden of producing evidence shifted to the employer; and, finally, others, that the employer was entitled to a nonsuit under Rule 41(b) of the Federal Rules of Civil Procedure if on the law and evidence the plaintiff failed to persuade the trial court that the employer's job action was impermissively motivated. *See* Mendez, *Presumption of Discriminatory Motive in Title VII Disparate Treatment Cases*, 32 STANFORD L. REV. 1129, 1135-1138 (1980).

Neither *Furnco* nor *Sweeney* alluded to Rule 301 of the Federal Rules of Evidence, even though the two cases were handed down over two years after the rules went into effect. Under Rule 301, unless otherwise provided by an act of Congress, a presumption in a civil action governed by federal law does not shift the risk of nonpersuasion to the opposing party. Instead, it merely shifts the burden of producing evidence "to rebut or meet" the presumed fact. S. REP. NO. 93-1277, 93d Cong., 2d Sess. 9 (1974), *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 7051. The "risk of nonpersuasion. . . remains throughout the trial upon the party on whom it was originally cast" by the substantive law that applies to the particular cause of action that is being tried. FED. R. EVID. 301. Of particular interest to the Subcommittee may be the fact that in enacting Rule 301, Congress disapproved the rule recommended by the Advisory Committee on the Federal Rules of Evidence and promulgated by the Supreme Court. *See* Mendez, *Presumptions of Discriminatory Motive in Title VII Disparate Treatment Cases*, 32 STANFORD L. REV. 1129, 1147-1148 (1980). Under the original rule, a presumption imposed on the opposing party "the burden of proving that the non-existence of the presumed fact was more probable than its existence." FEDERAL RULES OF EVIDENCE FOR UNITED STATES COURTS AND MAGISTRATES at 184 (West 1979).

The approach taken by Congress with respect to rebuttable presumptions in civil cases was mirrored in the Supreme Court's *Burdine* decision. There, the Court held that if the plaintiff produces sufficient evidence in his case-in-chief to trigger the *McDonnell Douglas* presumption of discriminatory motive, then the court must enter judgment for the plaintiff unless the defendant produces sufficient evidence to warrant a finding that he acted lawfully. *Texas Dept. of Community Affairs v. Burdine*, 101 S.Ct. 1089, 1094 (1981). Since the trial court, in making this finding, is prohibited from weighing credibility and must view the evidence in the light most favorable to the defendant, the burden placed on the employer is not onerous. *See* Mendez, *Presumption of Discriminatory Motive in Title VII Disparate Treatment Cases*, 32 STANFORD L. REV. 1129, 1145 n. 91 (1980). The heavier burden -- that of persuading the trier of fact of the existence of impermissible intent by a preponderance of the evidence -- remains with the plaintiff. *Texas Dept. of Community Affairs v. Burdine*, 101 S.Ct. 1089, 1095 (1981). Though *Burdine* brought much needed clarity to this aspect of Title VII litigation, the decision leaves much to be desired in terms of the goals of the act.

The allocation of the risk of nonpersuasion on the issue of discrimination is often critical in disparate treatment cases. Unlike disparate impact cases, where plaintiffs need only produce evidence that the effects of employment practices fall with disproportionate harshness on protected groups irrespective of the employer's intent, *Griggs, v. Duke Power Co.*, 401 U.S. 424, 432 (1971), in disparate treatment cases the presence or absence of an intent to discriminate is the crucial issue. *See* Mendez, *Presumptions of Discriminatory Motive in Title VII Disparate Treatment Cases*, 32 STANFORD L. REV. 1129, 1130 (1980). Employees can seldom produce direct evidence of discrimination. *Id.* Typically, they must rely on circumstantial evidence, such as differential treatment, inconsistent records, or statistical evidence of discrimination, to create an inference of impermissible motive. *Id.* The evidence which the plaintiffs can offer will not often compel the trier of fact to find that discrimination exists. *Id.* Since the employers' evidence of nondiscrimination may not be more convincing, the allocation of the risk of nonpersuasion on the issue of intent will often determine the outcome of disparate treatment cases: if the trier of fact finds himself at equipoise on a given issue, he must render a verdict against the party who has the burden of persuasion on that issue. *See* C. McCORMICK'S HANDBOOK OF THE LAW OF EVIDENCE §337, at 784 (2d ed. E. Cleary 1972).

Because of the paucity of direct evidence of discrimination, *Burdine* is not of much help to plaintiffs in disparate treatment cases. At most the *McDonnell Douglas* presumption of discriminatory motive, as interpreted in *Burdine*, will enable these plaintiffs to survive motions for directed verdicts based on the absence of direct or circumstantial evidence of discriminatory intent and motions for involuntary dismissals under Rule 41(b) also made on those grounds. *See* Mendez, *Presumptions of Discriminatory Motive in Title VII Disparate Treatment Cases*, 32 STANFORD L. REV. 1129, 1158 (1980). But the burden *Burdine* places on employers to rebut the presumed fact is insignificant because of the manner in which the judge must view the sufficiency of the employers' evidence. *Burdine* thus leaves the plaintiffs with the full burden of persuasion on the crucial question of impermissible intent. Id. The burden is especially onerous when one considers that it is the employers who often control the very evidence the plaintiffs need. Id.

Until the Burdine decision, some of the lower federal courts had been more responsive to the difficulties disparate treatment plaintiffs face. Id. at 1159. Recognizing that the national policy of eliminating employment discrimination should affect the allocation of the burden of persuasion on the issue of intent, they seized on the employers' superior access to evidence on this issue and shifted the burden of persuasion to them. Id. Under the common law view of presumptions, both the existence of strong policies that go beyond general procedural concerns and superior access to relevant evidence justify adopting presumptions that shift the burden of persuasion to the opposing party. Id. at 1160. Congress, therefore, could achieve the shift by amending Title VII to create the very kind of presumption rejected in Rule 301. The rule itself would not be a barrier, for it expressly states that Rule 301 presumptions are inapplicable where a different presumption is "otherwise provided for by an Act of Congress". FED. R. EVID. 301.

Under the common law, similar factors may also influence the allocation of the burdens of production and persuasion for any particular cause of action, irrespective of whether a presumption is involved. See Mendez, Presumptions of Discriminatory Motive in Title VII Disparate Treatment Cases, 32 STANFORD L. REV. 1129, 1160 (1980). Considerations of probability, policy, fairness, and access to the evidence all justify allocating to one party the burden of persuasion as to the nonexistence of an element in a cause of action, even if the adversary had the obligation to plead it. Id. Accordingly, if Congress wishes, it can dispense with presumptions entirely by an amendment to Title VII that states that employers bear the risk of nonpersuasion on the nonexistence of discriminatory intent.

Either approach would not burden employers unduly. It is they, not the plaintiffs, who most often have greater access to the relevant evidence, an advantage not necessarily equalized by the discovery rules. Id. at 1158, n. 146 and accompanying text. Nor will either approach affect in a significant way the manner in which employers marshall and present their evidence. As a matter of trial tactics, they will continue to offer the kind of evidence that is most likely to result in a verdict that is favorable to them, regardless of the rules allocating the burden of persuasion. Nor would the suggested amendments represent a sharp departure from established Title VII practice. Section 703(h) of the act sets out specific defenses which employers can raise in certain types of disparate treatment claims, and in County of Washington v. Gunther, 101 S.Ct. 2242 (1981) the Supreme Court held, among other matters, that by virtue of the Bennett Amendment employers can raise the Equal Pay defenses in sex disparate treatment cases brought under Title VII, even if the acts complained of do not violate the Equal Pay Act. Since accepted doctrine places on parties raising defenses the burden of persuading the trier of fact of the existence of the defense, see C. McCORMICK'S HANDBOOK OF THE LAW OF EVIDENCE §337, at 785 (2d ed. E. Cleary 1972), employers cannot complain that the suggested amendments would introduce unheard of obligations in Title VII litigation. The most important point, however, is that the suggested changes would begin to put teeth in Title VII. Burdine's interpretation of the act is so restrictive that it may well retard, rather than promote, the nation's commitment to eliminate employment discrimination.

M & M ASSOCIATION,
Los Angeles, Calif., August 20, 1981.

Ms. SUSAN GRAYSON,
c/o Augustus F. Hawkins, Chairman, House of Representatives, Subcommittee on Employment Opportunities, Rayburn House Office Building, Washington, D.C.

DEAR MS. GRAYSON: Due to the short notice, we regret that Merchants and Manufacturers Association was not able to be represented at the hearing held, August 14, 1981, in Los Angeles.

M & M fully supports the objectives of E.E.O. and the elimination of employment discrimination on an "equal" basis for all citizens. We do, however, believe that a feeling of "over-kill" exists among a large number of employers and employees alike. Due to the complexity of E.E.O. and AAP guidelines, employers are placed in a threatening position. The economic risks are immense as a result of alleged charges made by individuals and government agencies. The enforcement process breeds dissatisfaction on every side. Companies that have government contracts often must try to fulfill them by remodeling their hiring practices which can lead to reverse discrimination. Affirmative action often runs squarely into conflict with seniority provisions, which are not a constitutional right but have become hallowed clauses of most organized labor contracts.

The conflict is legally complex, economically pervasive and politically explosive. It feeds on emotional back-lash from threatened white males. It angers minorities who believe they are still denied their fair share of the American dream. Ultimately the issue forces Americans to look inside themselves and ask: What is fair? Should a white man today be penalized in order to make up for discrimination against women and minorities? In a nation that wants to offer equal opportunity for all, how far and in what ways can the law be used to give preference to some over others? If every citizen is entitled to the chance to succeed, how far may the government go to make sure he succeeds?

We are inconsistent as well as insincere if, in attempts to rectify the arbitrary and invidious discriminations of the past, we practice arbitrary and invidious discrimination in the present.

Our members have experienced difficulty in adhering to the complex regulations, e.g., The eight point factor analysis is unrealistic and irrelevant. It depends upon inaccurate data which are obsolete or non-existent. E.E.O. Coordinators and A.A. officials have considerable difficulty documenting availability analyses which results in skepticism among responsible line managers. Unfortunately, under the "burden of proof" concept, employers are placed in a position of automatic guilt until innocence can be proven. During a desk or on-site review, employers are frequently placed on the defensive without cause. Our members indicate different interpretations for the guidelines by bureau specialists.

As a remedy to successfully overcome employment discrimination, M & M Association recommends that the various government agencies provide advisory service to employers, minimize the numbers game and address overall social issues which go far beyond the employment scene. Government agencies should assist employers and employees alike and eliminate the adversary role.

Specific suggestions would be to:

1. Re-direct the EOS activities to provide advice and counsel to contractors as opposed to continuing enforcer activities.
2. Provide resource information which would include recruiting sources and more realistic demographic work force data.
3. Simplify the regulations so as to allow employees the opportunity to direct maximum attention to getting the E.E.O. job accomplished rather than in interpreting the regulations.
4. Realistically identify employers demonstrating "good faith" effort versus employers practicing overt employment discrimination.

It is M & M's position that employment discrimination problems will be greatly reduced as a result of a more cooperative relationship between employers and the government agencies.

Sincerely,

RICHARD E. BRADLEY, *Vice President.*

EDMUND G. BROWN JR., GOVERNOR

State and Consumer Services Agency
OFFICE OF THE SECRETARY
915 Capitol Mall, Suite 200
Sacramento, CA 95814

(916) 323-[illegible]
TDD: (916) 323-[illegible]

RECEIVED
SEP 28 1981

September 23, 1981

Mrs. Susan Grayson
Director
Subcommittee for Employment Opportunity
B 346 A, Rayburn Building
Washington, D.C. 20515

Dear Mrs. Grayson:

Thank you for the opportunity to submit written tertimony to supplement the hearings conducted in Los Angeles on August 16, 1981.

The attached was prepared by the California State Personnel Board which administers the state civil service system and the state affirmative action program.

You should also be receiving testimony under separate cover from the Department of Fair Employment and Housing, which is another department of our Agency.

Please place our office on your mailing list so that we may keep current on developments in the critical area.

Sincerely,

R. A. Bernheimer
Deputy Secretary

RAB:jy

Attachment

DEPARTMENTS AND PROGRAMS OF THE AGENCY

Building Standards Commission • Consumer Affairs • Fair Employment & Housing • Fire Marshal
Franchise Tax Board • General Services • Intergovernmental Personnel Act Grant Program
Museum of Science & Industry • Personnel Board • Public Broadcasting Commission
Public Employees' Retirement System • Statewide Compliance Coordination
Teachers' Retirement System • Veterans Affairs • Governor's Task Force on Civil Rights

STATE OF CALIFORNIA
EDMUND G. BROWN JR., Governor

CALIFORNIA STATE PERSONNEL BOARD
801 CAPITOL MALL • SACRAMENTO 95814

September 3, 1981

Honorable Gus Hawkins
U.S. House of Representatives
Washington, DC

Dear Mr. Hawkins:

Thank you for the opportunity to submit written testimony to supplement the hearings conducted in Los Angeles on August 16, 1981, focusing on the Federal Government's commitment to the enforcement of equal employment opportunity laws and to the concept of affirmative action.

The suggestions of a possible shift in government policy with respect to civil rights programs imply clearly that such mechanisms are (1) in conflict with Title VII and (2) are no longer necessary. Both perceptions are false; nevertheless, dissension surrounding these concepts has arisen because of conflicting interpretations and general misunderstanding.

It is unrealistic to ignore the need to actively correct patterns of discrimination that emerge from feelings about race, sex and disability. All objective evidence indicates patterns of discrimination have existed and continue to exist; therefore, we must continue to ensure that our society shares with all the opportunity for work.

Federal Executive Orders and statutes create a climate and directives that are very well understood by employers, public and private. Constitutional challenges or amendments prohibiting the use of voluntary affirmative action measures will jeopardize the gains made and the changes yet to be made and, therefore, we strongly support the continued commitment to the enforcement of equal employment opportunity laws and to the concept of affirmative action. The attached information amplifies our experience and demonstrates the value of an aggressive Affirmative Action Program.

Sincerely,

Brenda Y. Shockley

BRENDA Y. SHOCKLEY
President

I. Civil Rights Law and Affirmative Action

Affirmative action, properly administered, is not preferential treatment, nor is it strict numerical quotas. Rather, affirmative action is a collection of race and sex conscious remedies designed to ensure that otherwise fully qualified minorities, women and disabled are allowed to fully participate in those institutions in our society which have been traditionally closed to them. Viewed in the proper perspective, affirmative action is fundamentally a remedy to redress the continuing effects of past and present discrimination. Quotas, in fact, are in limited use in this country and are, in almost all cases, a direct result of some form of judicial response to specific findings of discrimination.

The Equal Employment Opportunity Commission (EEOC) stated that Title VII provided no separate concept for reverse discrimination and that affirmative action plans that comply with EEOC directives would not be found to violate Title VII.

The Supreme Court ruled in Bakke and Weber that race or ethnicity could be used legally as a determinant in an admissions program and that racial and ethnic quotas were permissible under Title VII where they were used in the integration of an employer's work force. The legal issue appears to be a matter of what measures are appropriate to remedy discrimination rather than constitutionality. Such issues can and should continue to be decided through case law.

II. Continued Need for Affirmative Action

Affirmative action is like any other aspect of personnel management or administrative system of government - it requires system changes.

The State of California has made meaningful progress and is considered a leader in the advancement of institutionalized systematic changes. The task of designing systems of goal setting and tracking in a work force of 140,000 people and 3,000 classes required three to four years of trial and error and the use of different techniques.

Despite the gains, minorities today do not fully participate in all occupations and levels of State Government. Hispanics are now severely underrepresented and will become more so upon consideration of 1980 Census data; minorities are underrepresented in higher level managerial classes; women do not fully participate in higher levels of management and average 70¢ for every dollar an average male State employee earns. Finally, the system changes associated with providing employment opportunities for disabled have just begun and continue to pose difficult questions for government.

9/81

Equal employment opportunity/affirmative action requires the commitment from everyone. The State Personnel Board can and does provide the leadership through the clear articulation of goals and policies and the development of innovative tools such as goals and timetables. Departments are given broad discretion and latitude in administering their programs including hiring and promoting. We provide a strong influence but do not dictate or "control" the selection of individuals except where it can be clearly shown that a specific individual was discriminated against.

We have endeavored to create an environment that produces results but does not ultimately lead to divisive challenges of discrimination or reverse discrimination. It is our belief that positive, assertive but voluntary actions will ultimately lead to the smoothest transition of California's State work force. No personnel system can produce absolute fairness on every decision but affirmative action is a logical part of the equity in our society.

STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY
EDMUND G. BROWN JR., Governor

EMPLOYMENT DEVELOPMENT DEPARTMENT
800 Capitol Mall, Sacramento, CA 95814
Telephone: (916) 323-7392

October 7, 1981
REFER TO: 57:01:gm

The Honorable Augustus Hawkins, Chairman
Subcommittee on Employment Opportunities,
House Committee on Education and Labor
936 W. Manchester Avenue
Los Angeles, CA 90044

Dear Congressman Hawkins:

In the course of the hearings which you held in Los Angeles, California, on August 13, 1981, I testified on behalf of the California Employment Development Department. During the discussion which followed my testimony, Congressman Weiss requested information regarding the number of enrollments in vocational education programs in California, by occupation, and the number of persons who have completed these programs who have obtained employment in those occupations. This information was requested from the agencies which share governance over vocational education in California, the State Department of Education, and the Chancellor's Office of the California Community Colleges. The information which they have provided is enclosed. If you have any questions regarding this material, or if you require any further information, please do not hesitate to contact me.

Sincerely,

Robert T. Bristow

ROBERT T. BRISTOW
Chief Deputy Director

Enc.

ate of California

Memorandum

Date : September 17, 1981

To : Robert T. Bristow
Chief Deputy Director
Employment Development Department

File No.:

From : Gus Guichard, Executive Vice Chancellor

Subject: Vocational Education Data Request for Congressional Committee

Attached is a summary of community college vocational education program completers and leavers for 1977-78 the last year for which complete data is available.

The 1977-78 program year was the last opportunity to gather reliable data prior to the implementation of the Vocational Education Data System (VEDS) by the National Center for Educational Statistics (NCES). The changeover has resulted in data deficiencies that California (and most other states) is still in the process of rectifying.

In any event, we believe that the summary information for 1977-78 does not differ appreciably from more recent years, and we hope it is useful to you. Bear in mind that the data attached represents state aggregated community college vocational education only.

Attachment

cc: Archie McPherran
Allan Petersen
Bill Boakes

GG:jk

CALIFORNIA COMMUNITY COLLEGES
COMPLETER LEAVER FOLLOWUP REPORT
VOCATIONAL EDUCATION PROGRAMS
STATE SUMMARY
PROGRAM YEAR 1977-78

U.S.O.E. Instructional Codes and Titles	COMPLETIONS	STATUS UNKNOWN	CONTINUING EDUCATION AT HIGHER LEVEL	OTHER REASONS	EMPLOYED FULL-TIME IN FIELD TRAINED OR RELATED FIELD	OTHER EMPLOYMENT	UNEMPLOYED (Seeking work)
Code 01.0000 Title Agriculture	8,720	3,444	720	548	2,636	952	420
Code 04.0000 Title Distributive Ed.	46,060	15,908	2,060	2,332	16,080	7,700	1,980
Code 07.0000 Title Health	26,260	6,480	932	744	15,912	1,800	392
Code 09.0200 Title Home Economics	11,508	3,404	1,012	652	3,588	2,012	840
Code 14.0000 Title Office Occupations	123,928	39,792	4,716	4,428	55,228	16,300	3,464
Code 16.0000 Title Technical	29,924	13,560	2,088	3,064	7,636	2,780	796
Code 17.0000 Title Trade & Industry	121,752	31,152	2,140	6,376	61,172	12,796	8,116
STATE TOTALS	368,152	113,740	13,668	18,144	162,252	44,340	16,008
%	100%	31%	3.7%	4.9%	44%	12%	4.4%

WILSON RILES
Superintendent of Public Instruction
and Director of Education

STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL, SACRAMENTO 95814

September 14, 1981

To: Bob Bristow, Chief Deputy Director
Employment Development Department

From: Davis Campbell, Deputy Superintendent for Programs
State Department of Education

Subject: Response to Data Request - File 57:01:jl

Your memorandum of August 27, 1981 asks that the Department of Education provide you with follow-up information which would indicate the number of students who subsequently obtain employment in occupations for which they were trained.

We are transmitting with this memo a Statistical Report on Vocational Education for Program Years 1978-79 and 1979-80. While this is more than was requested, we thought it beneficial that you have in your files a report which outlines the scope of the vocational education program as it exists in California.

Thank you for your request. Should you need any additional information, please contact Roland Boldt at (916) 445-8758.

cc: Roland Boldt

STATISTICAL REPORT ON VOCATIONAL EDUCATION

FOR THE

PROGRAM YEARS 1978-79 AND 1979-80

Pursuant to Education Code Sections 8007.5 and 33403

Education Code Section 8007.5: Annual Reports to Legislature.

The Department of Education and the Board of Governors of the Community Colleges shall submit the following reports each year to the Legislature.

(a) An annual descriptive report as defined in Section 33403 containing information on vocational education and technical training programs, including regional occupational centers and programs. Such report shall be coordinated with federal evaluation requirements pursuant to Public Law 94-482 and shall contain:

(1) Enrollment defined in terms of secondary students, postsecondary students, and adults;

(2) The number of graduates of programs and dropout rates;

(3) The number of students trained for specific entry level occupations;

(4) Fiscal information, including income by source and expenditure by category; and

(5) Other factors as determined in Budget Act language pursuant to Section 33404.

(b) An annual individual program evaluation derived from a representative sample of participating districts and schools containing information on program effectiveness as measured by:

(1) The extent to which program completers:

(A) Find employment in occupations related to their training, and

(B) Are considered by their employers to be well trained and prepared for employment.

* * *

Education Code Section 33403: Types of Evaluation; Applicable Programs; Preparation Schedule.

The Department of Education shall perform evaluations of educational programs in accordance with the following:

* * *

(b) A descriptive report of an individual educational program describes the objectives and components of the subject program, the number of pupils involved, and general information regarding the program's cost and the extent of the program's implementation.

* * *

PART A ENROLLMENTS

LEVEL: Secondary
Includes ROC/P

Fiscal Year 78-79

USOE CODE A	VOCATIONAL PROGRAMS B	NUMBER OF STUDENTS ENROLLED: UNDUPLICATED COUNT: SECONDARY: Below Grade Eleven C	Grades 11 & 12 D	ADULT: Long Term (more than 500 hours) E	Short Term (less than 500 hours) F	DUPLICATED COUNT: Apprenticeship Programs G	Cooperative Vocational Education Programs H	Vocational Work Experience Education Prog. I	Terminations (from Cols. D & F only): Completers J	Leavers K
01.	Agriculture Education	22,586	30,338	1,617	515	(-0-)	(184)	(482)	16,360	[illegible]
04.	Distributive Education	2,839	23,546	3,025	2,982	(4)	(1,004)	(996)	15,911	[illegible]
07.	Health Education	143	9,307	6,006	4,386	(30)	(46)	(78)	10,605	2,573
09.02	Occupational Preparation	2,306	15,937	1,263	2,324	(-0-)	(71)	(296)	2,226	2,042
10.	Industrial Arts	127,066	64,893	1	830	-0-	-0-	(456)	-0-	-0-
14.	Office Education	105,610	184,981	20,460	34,586	-0-	(736)	(4,818)	110,599	27,440
16.	Technical Education	418	59	59	743	(266)	(25)	-0-	306	72
17.	Trade and Industrial Education	20,872	111,265	34,740	23,429	(10,615)	(424)	(1,129)	65,376	[illegible]
	SUBTOTAL	282,840	440,926	67,171	69,803	(10,915)	(2,490)	(8,255)	229,383	[illegible]
09.01	Consumer and Homemaking Education	81,491	135,090	126	6,869	-0-	-0-	(494)	-0-	-0-
19.	Exploratory and General Work Experience Education	4,621	-0-	-0-	40	-0-	(3)	(660)	20,797	[illegible]
	GRAND TOTAL	368,952	576,016	67,297	76,712	(10,915)	(2,493)	(9,409)	250,180	85,944

Source: VEA 40, Section I
Submitted: 8-1-79

Does not Include ROC/P	Disadvantaged Students	Limited English Speaking Students	Handicapped Students	Programs for Displaced Homemakers	Work Study Programs	Student Stipends	Placement Services for Students	Support Services for Women	Day Care Services	Economically Depressed Area Programs
Secondary	91,438	3,724	12,733	14	701	XXX	60	-0-	188	81,471
Postsecondary	98,131	12,242	11,956	704	3,684	XXX	8,708	7,283	763	55,521
Total	189,569	15,966	24,689	718	4,385	XXX	8,768	7,283	951	147,[illegible]

LEVEL: Post:econdary

.cal Year 78-79

USOE CODE A	VOCATIONAL PROGRAMS B	NUMBER OF STUDENTS ENROLLED: UNDUPLICATED COUNT: POSTSECONDARY		ADULT: Long Term (more than 500 hours) E	ADULT: Short Term (less than 500 hours) F	DUPLICATED COUNT: Appren-ticeship Programs G	Cooperative Vocational Education Programs H	Vocational Work Experi-ence Educa-tion Prog. I	Terminations (from Cols. D & E only): Completers J	Leavers K
			D							
01.	Agriculture Education		16,722	2,223	2,901	(60)	(736)	(1,938)	4,602	127
04.	Distributive Education		79,829	20,356	8,105	(4)	(4,434)	(1,611)	21,827	706
07.	Health Education		34,717	8,304	8,102	(-0-)	(914)	(1,020)	11,131	279
09.02	Occupational Preparation		25,002	7,132	9,242	(5)	(972)	(1,126)	10,979	298
10.	Industrial Arts		-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
14.	Office Education		174,757	33,604	33,087	(52)	(7,680)	(6,987)	46,935	2,052
16.	Technical Education		63,249	12,027	4,186	(173)	(2,087)	(1,986)	13,802	579
17.	Trade and Industrial Education		125,006	34,360	30,248	(19,323)	(6,014)	(8,245)	39,920	1,206
	SUBTOTAL		519,282	118,506	95,871	(19,617)	(22,837)	(22,913)	152,196	5,138
09.01	Consumer and Homemaking Education		20,016	12,512	20,922	-0-	-0-	(827)	-0-	-0-
19.	Exploratory and General Work Experience Education		1,403	-0-	-0-	-0-	-0-	-0-	-0-	-0-
	GRAND TOTAL		540,701	131,018	116,793	(19,617)	(22,837)	(23,740)	152,196	5,138

Source: VEA 40, Section I
Submitted: 8-1-79

Total Enrollments Unduplicated Count (Columns C + D + E + F),	Secondary	1,2[illegible]184
Total Enrollments Unduplicated Count (Columns D + E + F)	Postsecondary	78[illegible],512
	TOTAL	2,057,696

LEVEL: ROC/P

F[illegible]cal Year 78-79

		NUMBER OF STUDENTS ENROLLED								
		UNDUPLICATED COUNT				DUPLICATED COUNT				
		SECONDARY		ADULT					Terminations (from Cols. D & E only)	
USOE CODE A	VOCATIONAL PROGRAMS B	Below Grade Eleven C	Grades 11 & 12 D	Long Term (more than 500 hours) E	Short Term (less than 500 hours) F	Apprenticeship Programs G	Cooperative Vocational Education Programs H	Vocational Work Experience Education Prog. I	Completers J	Leavers K
01.	Agriculture Education	407	7,393	1,394	211		(78)		5,548	2,[illegible]
04.	Distributive Education	772	15,220	2,428	671		(734)		11,409	4,294
07.	Health Education	58	7,331	4,146	925		(46)		7,472	2,261
09.02	Occupational Preparation	100	5,864	1,163	367		(61)		4,596	1,403
10.	Industrial Arts	N/A	N/A	N/A	N/A		N/A		N/A	N/A
14.	Office Education	152	18,058	16,677	3,838		(267)		23,256	7,132
16.	Technical Education	-0-	418	59	266	(266)	(25)		308	[illegible]
17.	Trade and Industrial Education	1,472	40,628	24,277	10,860	(6,007)	(353)		37,135	11,224
	SUBTOTAL	2,961	94,912	50,150	17,138	(6,273)	(1,564)	-0-	89,773	[illegible]
09.01	Consumer and Homemaking Education	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
19.	Exploratory and General Work Experience Education	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
	GRAND TOTAL	2,961	94,912	50,150	17,138	(6,273)	(1,564)	-0-	89,773	31,465

Source: VEA 40, Section I
Submitted: 8-1-79

	Disadvantaged Students	Limited English Speaking Students	Handicapped Students	Programs for Displaced Homemakers	Work Study Programs	Student Stipends	Placement Services for Students	Support Services for Women	Day Care Services	Economically Depressed Area Programs
Secondary										
Postsecondary										
Total										

Source: VEA 40, Section II

LEVEL: Secondary　　　　Fiscal Year 79-80

Includes ROC/P

USOE CODE A	VOCATIONAL PROGRAMS B	NUMBER OF STUDENTS ENROLLED							Terminations (from Cols. D & E only)	
		UNDUPLICATED COUNT				DUPLICATED COUNT				
		SECONDARY		ADULT						
		Below Grade Eleven C	Grades 11 & 12 D	Long Term (more than 500 hours) E	Short Term (less than 500 hours) F	Apprenticeship Programs G	Cooperative Vocational Education Programs H	Vocational Work Experience Education Prog. I	Completers J	Leavers K
01.	Agriculture Education	23,627	26,246	1,626	342	(-0-)	(269)	(478)	12,272	[illegible]
04.	Distributive Education	1,782	20,054	3,812	1,859	(-0-)	(1,434)	(623)	13,331	[illegible]
07.	Health Education	89	8,936	6,841	3,649	(70)	(6)	(50)	9,562	2,997
09.02	Occupational Preparation	1,965	12,843	867	687	(23)	(383)	(256)	7,274	[illegible]
10.	Industrial Arts	83,091	64,507	25	364	-0-	-0-	(266)	-0-	-0-
14.	Office Education	107,860	170,313	19,747	34,880	-0-	(916)	(3,343)	90,730	26,572
16.	Technical Education	-0-	305	197	-0-	(111)	(123)	-0-	432	76
17.	Trade and Industrial Education	19,500	94,682	40,379	14,394	(8,200)	(267)	[illegible]	[illegible]	[illegible]
	SUBTOTAL	237,914	397,966	73,494	56,175	(8,404)	(3,398)	(5,871)	[illegible]	[illegible]
09.01	Consumer and Homemaking Education	74,303	108,292	336	6,575	-0-	-0-	(420)	-0-	-0-
19.	Exploratory and General Work Experience Education	4,288	58,244	4	-0-	-0-	(2)	(651)	1	-0-
	GRAND TOTAL	316,505	564,502	73,834	62,750	(8,404)	(3,400)	(6,948)	195,950	[illegible]

Source: VEA 48, Section I
Submitted: 7-16-80

Does not Include ROC/P	Disadvantaged Students	Limited English Speaking Students	Handicapped Students	Programs for Displaced Homemakers	Work Study Programs	Student Stipends	Placement Services for Students	Support Services for Women	Day Care Services	Economically Depressed Area Programs
Secondary	92,544	5,585	14,849	83	1,310	XXX	906	67	222	63,718
*Postsecondary	103,037	12,854	12,551	739	3,868	XXX	9,413	7,647	801	68,902
Total	195,581	18,439	27,403	822	5,178	XXX	10,319	7,714	1,022	[illegible]

*Projected 5% from 78-79

Source: VEA 48, Section II

LEVEL: Postsecondary

scal Year 79-30

USOE CODE	VOCATIONAL PROGRAMS	NUMBER OF STUDENTS ENROLLED						Terminations ** (from Cols. D & E only)	
		UNDUPLICATED COUNT *			DUPLICATED COUNT **				
		POSTSECONDARY	ADULT						
			Long Term (more than 500 hours)	Short Term (less than 500 hours)	Apprenticeship Programs	Cooperative Vocational Education Programs	Vocational Work Experience Education Prog.	Completers	Leavers
A	B	D	E	F	G	H	I	J	K
01.	Agriculture Education	26,446	N/A	N/A	(63)	(773)	(2,035)	4,332	133
04.	Distributive Education	122,876	N/A	N/A	(4)	(4,656)	(1,692)	[illegible]	[illegible]
07.	Health Education	65,258	N/A	N/A	-0-	(960)	(1,071)	14,239	244
09.02	Occupational Preparation	36,148	N/A	N/A	(5)	(1,019)	(1,182)	11,529	313
10.	Industrial Arts	-0-	N/A	N/A	-0-	-0-	-0-	-0-	-0-
14.	Office Education	348,745	N/A	N/A	(55)	(8,064)	(7,336)	49,282	2,153
16.	Technical Education	107,235	N/A	N/A	(180)	(3,121)	(2,085)	[illegible]	[illegible]
17.	Trade and Industrial Education	227,139	N/A	N/A	(2,191)	(6,315)	(8,657)	41,316	[illegible]
	SUBTOTAL	933,847	N/A	N/A	(2,498)	(23,978)	(24,058)	159,306	[illegible]
09.01	Consumer and Homemaking Education	166,980	N/A	N/A	-0-	-0-	(868)	-0-	-0-
99.	Not elsewhere Classified	19,293	N/A	N/A	-0-	-0-	-0-	-0-	-0-
	GRAND TOTAL	1,120,120	N/A	N/A	(2,498)	(23,978)	(24,926)	159,306	5,333

**5. projected increase from 78-79
*90% complete

Source: VEA 40, CCVOCED PRTFLE 2-1-81
Submitted: 11-1-80

Total Enrollments Unduplicated Count (Columns C + D + E + F),	Secondary	1,158,771
Total Enrollments Unduplicated Count (Column D)	Postsecondary	1,120,120
	TOTAL	2,278,891

LEVEL: ROC/P

Fiscal Year 79-80

USOE CODE	VOCATIONAL PROGRAMS	NUMBER OF STUDENTS ENROLLED							Terminations (from Cols. D & E only)	
		UNDUPLICATED COUNT				DUPLICATED COUNT				
		SECONDARY		ADULT						
		Below Grade Eleven	Grades 11 & 12	Long Term (more than 500 hours)	Short Term (less than 500 hours)	Appren-ticeship Programs	Cooperative Vocational Education Programs	Vocational Work Experience Education Prog.	Completers	Leavers
A	B	C	D	E	F	G	H	I	J	K
01.	Agriculture Education	140	7,617	1,351	-0-		(255)		4,792	[illegible]
04.	Distributive Education	29	14,631	3,138	1		(1,153)		[illegible]	[illegible]
07.	Health Education	8	7,459	4,635	-0-		(6)		[illegible]	[illegible]
09.03	Occupational Preparation	12	6,074	834	-0-		(383)		4,155	1,514
10.	Industrial Arts									
14.	Office Education	12	19,357	14,382	-0-		(748)	(26)	18,493	7,880
16.	Technical Education	-0-	385	197	-0-	(111)	(123)		433	[illegible]
17.	Trade and Industrial Education	336	41,552	26,311	-0-	(3,185)	(201)		34,324	[illegible]
	SUBTOTAL	537	97,075	50,848	1	(3,296)	(2,869)	[illegible]	[illegible]	[illegible]
09.01	Consumer and Homemaking Education									
19.	Exploratory and General Work Experience Education									
	GRAND TOTAL	537	97,075	50,848	1	(3,296)	(2,869)	(26)	79,436	33,602

Source: VEA 48, Section I
Submitted: 7-16-80

	Disadvan-taged Students	Limited English Speaking Students	Handicapped Students	Programs for Dis-placed Homemakers	Work Study Programs	Student Stipends	Placement Services for Students	Support Services for Women	Day Care Services	Economically Depressed Area Programs
Secondary										
Postsecondary										
Total										

Source: VEA 48, Section II

ROC/P ENROLLMENTS

Reported Enrollments in Regional Occupational Centers and Programs by Type of Instructional Program or Course in California, 1969-70 and 1972-73 through 1979-80.

TYPE OF PROGRAM OR COURSE (1)*	NUMBER OF STUDENTS ENROLLED								
	PY 69 - 70	PY 72 - 73	PY 73 - 74	PY 74 - 75	PY 75 - 76	PY 76 - 77	PY 77 - 78	PY 78 - 79	PY 79 - 80
AGRICULTURE	1,387	2,664	6,939	10,268	10,989	12,813	12,451	9,405	[illegible]
DISTRIBUTIVE OCCUPATIONS	1,079	6,647	12,199	20,099	19,124	19,686	24,212	19,091	17,799
HEALTH OCCUPATIONS	1,146	6,397	10,846	12,285	12,416	13,096	14,629	12,460	12,102
HOME ECONOMICS	----	3,397	6,822	8,295	12,457	8,605	7,851	7,500	6,920
OFFICE OCCUPATIONS	11,010	21,314	27,917	31,516	33,443	37,657	43,459	[illegible]	[illegible]
TECHNICAL	1,597	1,015	1,603	2,039	2,235	1,220	410	743	582
TRADE AND INDUSTRIAL	8,605	41,422	57,050	77,981	81,690	73,819	86,176	77,237	68,139
WORK EXPERIENCE EDUCATION	1,584	(2)*	(2)*	(2)*	----	----	155	-0-	(26)*
MISCELLANEOUS OCCUPATIONS	1,856	----	----	----	----	----	1,741	-0-	-0-
COOPERATIVE								(1,564)	(2,869)
APPRENTICESHIP								(6,273)	(3,296)
TOTAL	28,264	83,856	123,376	162,483	172,354	166,896	191,084	165,161	148,461

(1) U.S. Office of Education instructional program classification
(2) All () totals are duplicated count

SOURCE: VEA-48s submitted by LEAs

BEST COPY AVAILABLE

PART B

EXPENDITURES

TOTAL EXPENDITURES*

Program Year 1978 - 79

Subpart**	Secondary	Postsecondary	Universities	TOTAL
2	208,214,034	434,269,160		642,483,194
3	19,934,130	15,309,019	542,219	35,785,368
4	886,913	1,574,817		2,461,730
5	48,842,329	8,608,624		57,450,953
TOTAL	277,877,406	459,761,620	542,219	738,181,245

*99% Complete
**Subpart 2 - Basic Grant

Subpart 3 - Program Improvement and Supportive Services

Subpart 4 - Special Programs for the Disadvantaged

Subpart 5 - Consumer and Homemaking Education

SOURCE: EDVEDFXK/VED727 1-9-81

PROJECTED TOTAL EXPENDITURES*

Program Year 1979 - 80

Subpart**	Secondary	Postsecondary	Universities	TOTAL*
2	218,624,735	455,982,618		674,607,353
3	20,930,837	16,074,470	44,686	37,049,993
4	931,259	1,653,558		2,584,817
5	51,284,445	9,039,055		60,323,500
TOTAL	291,771,276	482,749,701	44,686	774,565,663

*5% Increase from 78-79 figures
**Subpart 2 - Basic Grant

Subpart 3 - Program Improvement and Supportive Services

Subpart 4 - Special Programs for the Disadvantaged

Subpart 5 - Consumer and Homemaking Education

ROC/P INCOME/EXPENDITURES

PROGRAM YEAR 1979-80

INCOME	
Beginning Balance	$ 12,896,829
Federal	758,313
Federal and State	72,751
State	4,163,128
County & Local (Excluding Revenue Limit)	9,641,113
Local Share Revenue Limit (Adult & Non-Adult)	66,385,318
Incoming Transfers	7,869,627
TOTAL INCOME	$101,787,079
EXPENDITURES	
Ending Balance	$ 11,166,898
Salaries	36,470,085
Benefits	6,188,850
Books, Supplies, Contracts & Other Outgo	40,328,085
Capital Outlay	3,249,107
Other Outgo	4,384,079
TOTAL EXPENDITURES	$101,787,079

Source: J-41 and J-73
submitted by ROC/Ps

ROC/P INCOME/EXPENDITURES

Program Year 1979 - 80

INCOME	
Beginning Balance	$ 8,197,498
Federal	1,063,994
State	6,249,383
Federal and State	-0-
County and Local	1,837,766
Revenue Limit	36,994,956
Tax Receipts	6,225,377
Other Designated Income	14,731,782
Incoming Transfers	39,011,132
TOTAL INCOME	$114,311,888
EXPENDITURES	
Ending Balance	$ 8,331,315
Salaries	23,818,905
Benefits	3,974,536
Books, Supplies, Contracts	23,082,739
Capital Outlay	2,659,900
Other Outgo	1,638,366
Transfers Out	9,109,393
Expenditures (Counties not itemized above)	41,696,734
TOTAL EXPENDITURES	$114,311,888

Source: J-41 and J-73
submitted by ROC/Ps

PART C

FOLLOW-UP

Student Completions Only

Completions*
by
Level and USOE Codes

1978 - 79

	Secondary	Postsecondary	TOTAL
Agriculture	16,258	5,152	21,410
Distributive	17,657	32,340	49,997
Health	11,066	13,700	24,766
Home Economics	12,405	7,804	20,209
Office	87,435	33,600	121,035
Technical	400	14,144	14,544
Trade and Industrial	79,062	34,516	113,578
TOTAL	224,283	141,256	365,539
Handicapped	(879)	(3,528)	(4,407)
Disadvantaged	(6,289)	(21,552)	(27,841)
Limited English Speaking	(1,892)	(6,048)	(7,940)

*This data was collected by selected sample

NOTE: Figures contained in () represent duplicated counts of enrollments reported in figures without ().

SOURCE: EDVEASDB/VEA255-B 12-15-80

PART D

STUDENT FOLLOW-UP OF COMPLETIONS

Student Follow-up
of
Completions

1978 - 79

		Secondary	Postsecondary
1.	Total Number Completing Programs and Left School (See Part C)	159,511	35,314
2.	Left Prior to Completion with Marketable Skills	N/A	N/A
3.	Status Unknown	52,894	11,473
4.	Not Available for Placement	N/A	N/A
5.	Continuing Higher Education	36,057	2,432
6.	Other Reasons	14,589	1,779
7.	Employed Full-Time in Occupation for Which Trained or Related Occupation	32,308	13,726
8.	Other Employment	18,033	4,833
9.	Unemployed Seeking Work	5,630	1,061

SOURCE: VEA-45s submitted by LEAs May 1979

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FOLLOW-UP AND EMPLOYMENT DATA OF ROC/P STUDENTS BY TYPE OF PROGRAM 1978 - 1979

Reported Follow-Up and Employment Data of California Students Who Had Been Enrolled In Regional Occupational Centers and Programs

DATA	NUMBER OF STUDENTS, BY TYPE OF PROGRAM						
	Total Students Completing Program and Leaving School	Status Unknown	Continuing Education	Other Reasons	Employed Full-Time in Field Trained or Related Field	Other Employment	Unemployed (Seeking Work)
AGRICULTURE	7,799	1,513	2,052	910	1,051	1,306	265
DISTRIBUTIVE EDUCATION	16,017	4,602	3,498	1,854	2,661	2,670	725
HEALTH OCCUPATIONS	10,292	2,670	1,947	895	2,970	1,448	352
HOME ECONOMICS	5,941	1,920	1,476	480	917	946	202
OFFICE OCCUPATIONS	29,814	9,046	6,092	2,610	7,189	3,398	1,479
TECHNICAL EDUCATION	400	109	106	38	95	44	6
TRADE & INDUSTRY	50,468	18,189	9,894	4,689	10,570	5,620	1,376
TOTAL	120,731	38,049	25,065	11,476	25,453	15,140	4,538
HANDICAPPED	(275)	(55)	(89)	(41)	(40)	(24)	(26)
DISADVANTAGED	(1,225)	(758)	(92)	(67)	(154)	[illegible]	(77)
LIMITED-ENGLISH SPKG.	(64)	(25)	(4)	(5)	(14)	(8)	(8)

These totals include adults and secondary students enrolled in ROC/Ps

SOURCE: EDVEASDB/VEA255-B

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PART E DISTRICT PARTICIPATION IN ROC/Ps and TOTAL ENROLLMENTS

REPORTED PARTICIPATION IN REGIONAL OCCUPATIONAL CENTERS AND PROGRAMS IN CALIFORNIA, 1969-70 and 1973-73 THROUGH

Participating Agencies and Enrollments	TOTAL PARTICIPATION BY FISCAL YEAR								
	69-70	72-73	73-74	74-75	75-76	76-77	77-78	78-79	79-80
Agencies									
Office of County Superintendent of Schools	22	35	44	56	56	56	56	56	56
High Schools and Unified School Districts	115	234	274	351	358	348	343	343	341
○ Community College Districts	0	12	11	15	16	16	16	5	5
Enrollments*									
High School Students (Percentage of total enrollment)	12,573 (44.5)	46,415 (55.6)	75,127 (60.9)	113,399 (69.8)	112,347 (65.2)	103,848 (62.2)	110,475 (57.8)	97,873 (59.3)	97,610 (65.7)
Adults and Out-of-School Youth (Percentage of total enrollment)	15,691 (55.5)	37,041 (44.4)	48,246 (39.1)	49,084 (30.2)	60,007 (34.8)	63,048 (37.8)	80,609 (42.2)	67,288 (40.7)	[illegible] [illegible]
TOTAL	28,264	83,456	123,373	162,483	172,354	166,896	191,084	165,161	[illegible]

* Reported unduplicated student enrollment.

SOURCE: VEA-48s submitted by ROC/Ps in July.